LATE FILED

ASHBY COMMUNITY

BEFORE THE TENNESSEE REGULATORY AUTHORITY = CENTED NASHVILLE, TENNESSEE

	2004 DEC 15 PH 4: 19
IN RE:	T.R.A. DOCKET ROOM
PETITION OF KING'S CHAPEL)	No.
CAPACITY, LLC FOR CERTIFICATE OF)	·
CONVENIENCE AND NECESSITY TO)	DOCKET NO. 04-00335
SERVE AN AREA IN WILLIAMSON)	
COUNTY, TENNESSEE KNOWN AS	

PETITIONER'S RESPONSE TO FIRST SET OF DISCOVERY REQUESTS

INTERROGATORIES

1. Please identify all persons who participated in answering these Interrogatories If more than one person, please state to which interrogatory each person responded.

RESPONSE:

John Powell

Hal Novak

Each participated in conversations over these Interrogatories.

2. Please list any and all lawsuits, civil and/or criminal, to which King's Chapel has been a party. For each lawsuit, please provide the following: the jurisdiction in which each lawsuit was filed, the basis of each lawsuit and the disposition of each lawsuit.

RESPONSE:

Tennessee Wastewater Systems Inc., et al. v. King's Chapel Capacity, LLC (Case No. 31074)

Jurisdiction: Chancery Court, Williamson County.

Disposition This case was filed on November 1, 2004 and is still pending.

Basis of Lawsuit. Tennessee Wastewater Systems, Inc. f/k/a On-Site Systems, Inc., and On-Site Capacity Development Company filed a claim for breach of contract, civil conspiracy, and declaratory and injunctive relief against J. Powell Development, LLC, John Powell, Elaine Powell, C. Wright Pinson, Ashby Communities, LLC Hang Rock, LLC, Arrington Meadows, LLC and Kings Chapel Capacity, LLC Kings Chapel filed an answer denying the claims against it.

3. Please identify all individuals who have an interest, whether it financial, through employment or otherwise, in King's Chapel, and as to each such individual, state the following what money they have invested, if any in King's Chapel, and the date of said investment, what job title they have with King's Chapel, if any, and the date said employment commenced; and what other officer or board position they hold with King's Chapel, if any, and the date said officer or board position commenced.

RESPONSE

John and Elaine Powell own 50% interest in King's Chapel Capacity, LLC; whereas, C. Wright Pinson owns the remaining 50% interest. C. Wright Pinson pledged equal cash deposits in order to obtain two different Irrevocable Letters of Credit from SunTrust Bank. These Letters of Credit were then used to bond the wastewater system for Kings Chapel. On September 30th, 2004, the following letters of credit were issued:

- Letter of credit for Williamson County Backup Bond (\$651,000.00).
- Letter of credit for Williamson County Collection Bond (\$998,208.00).

To Date C. Wright Pinson has pledged \$1,649,208.00 in cash for Kings Chapel.

4. Please identify all applications for any licensure or approval, whether from local,

state or federal authorities, King's Chapel has submitted, and as to each such application, state the authority to whom it was submitted, the licensure or approval sought, the date of said application, and the status of said application.

RESPONSE:

- A. King's Chapel Capacity filed for a Certificate of Convenience and Necessity (Docket 04-00335) from the Tennessee Regulatory Agency on October 5, 2004, which is the subject of this matter.
- B The bonds identified in Interrogatory #3 have been tendered to the Williamson County Planning Commission for approval.
- 5. Please identify the individual or individuals who prepared the Application, and as to each such individual or individuals, state the specific portions of the Application prepared or contributed to, and all sources of information replied upon for said preparation or contribution.

RESPONSE:

King's Chapel objects to this Request because it is overbroad, unduly burdensome, and violates the work product doctrine. Without waiving this objection, the entire Petition for a Certificate of Convenience & Necessity was prepared, reviewed and/or edited by John Powell, Hal Novak, and Chuck Welch, counsel for King's Chapel. Documents relied upon in preparing the Petition were attached as exhibits to the Petition.

6. Please identify who constructed the system for which King's Chapel seeks approval through this action, the current owner of the system, and how that ownership was obtained, or the basis for said ownership.

RESPONSE:

The partially completed system was constructed by Onsite Capacity Development Company. The current owner of the property is Ashby Communities, LLC by deed from Arrington Meadows, LLC.

7. Describe in detail the relationship among King's Chapel, J. Powell Development, LLC, Ashby Communities, LLC, Hang Rock, LLC and Arrington Meadows, LLC including but not limited to, any commonalities in ownership, operation, joint ventures and jointly held property or licensures.

RESPONSE:

- John Powell has 100% interest in Ashby Communities, LLC.
- John & Elaine Powell have a 50% ownership in Arrington Meadows, LLC.
 Wright Pinson has the remaining 50% ownership in Arrington Meadows,
 LLC.
- Wright Pinson currently has a 100% ownership interest in Hang Rock, LLC
 Eventually by agreement, John & Elaine Powell will own 50% of Hang Rock,
 LLC.
- John & Elaine Powell have a 50% ownership in King's Chapel Capacity,
 LLC. Wright Pinson has the remaining 50% ownership in King's Chapel
 Capacity, LLC.

King's Chapel has no knowledge of the existence or any connection with J. Powell Development, LLC. Hang Rock, LLC and Arrington Meadows, LLC entered an agreement with John Powell and Ashby Communities, LLC to develop real property. Each of the limited liability companies were formed separate and independent of each other, and each have remained separate, legal entities.

Provide the factual basis for your statement, in paragraph 2 of the Application, that Ashby Communities, LLC has constructed a wastewater system and transferred this system to King's Chapel to operate. In answering this Interrogatory, clearly explain in what manner or through what mechanism Ashby Communities, LLC claims to have constructed the wastewater system that is the subject of the Application, and pursuant to what authority it transferred the system to King's Chapel to operate.

RESPONSE:

By agreement, the property owners first engaged John Powell and then Ashby Communities, LLC, an LLC created by John Powell, to residentially develop the property which includes sewer services and all other utilities and infrastructure associated with the subdivision development. Ashby Communities, LLC has the authority to disburse funds for construction and to transfer property necessary for the residential development. The sewer plans were submitted by an unlicensed engineering firm, and the sewer system was partially constructed by unlicensed contractors. Ashby Communities, LLC has taken the necessary action to ensure that the system is reverse engineered and that any construction for the completion of the system is performed by licensed contractors. By agreement this system has been transferred to Kings Chapel for its operation, contingent upon approval of the appropriate regulatory agencies

9. Identify the owner or owners of the real property King's Chapel identifies in the Application, at paragraph 6 and with Exhibit 2, as the service area for which it seeks authority to operate wastewater disposal systems. As to each such owner or owners identified, state the dates of property acquisition, from whom the property was acquired, percentage of ownership and which portion of the real property he or she or it owns.

RESPONSE:

Owner Date of		Percentage of	From whom the	
	Acquisition		Property was	
	_		Acquired	
Arrington	Fall 2002	100%	Belle Meadows	
Meadows, LLC			LLC	
Hang Rock, LLC	Fall 2003	100%	Chrisman Family	
Over the Branch,	Fall 2003	100%	Chrisman Family	
LLC				
Kings Camp,	Fall 2003	100%	Chrisman Family	
LLC				
Gerald Kole and Sp	Spring 2003	100%	Robinson Family	
Diane Kole				

10. Identify what entity, to which you refer in paragraph 7 of the Application, was granted, by the "TDEC, Division of Water Pollution Control," approval for the system that is the subject of the Application. In your response, state when the subject approval was granted initially, if there has been any transfer of approval, and if so, when and to whom and through what means.

RESPONSE:

TDEC granted a Standard Operating Permit ("SOP") #03032 to both Onsite Systems, Inc and Arrington Meadows. This Permit was filed on July 8th 2003, and issued on September 30th 2003. To our knowledge, a transfer of this permit has not been requested. However, we have been formally noticed that TDEC intends to terminate the permit of TWS which has already been made a part of this record.

11. Provide the factual basis for your statement, in paragraph 8 of the Application, that "Wastewater services are not available from any other utility company in the proposed service area" given the fact that TWS is a public utility authorized to provide wastewater treatment systems in the proposed service area.

RESPONSE:

King's Chapel Capacity recognizes that TWS has a nonexclusive right to provide wastewater service in the proposed service area. However, TWS does not have an existing wastewater system that can service the King's Chapel Subdivision. TWS has stated that they are only willing to provide wastewater service if Ashby Communities, LLC first builds and pays for a wastewater plant and conveys the plant to TWS without compensation.

12. Identify the "various legal, accounting and regulatory experts" King's Chapel has engaged to assist it with the "managerial duties" associated with operating the system identified in the Application. As to each such expert, state the date of hire, area of expertise, background and experience in that area of expertise, the basis for compensation (i.e. hourly rate, set fee) and the amount of compensation paid to date.

RESPONSE:

King's Chapel objects to this Request as it seeks information protected under the attorney/client privilege. Without waiving the objection, King's Chapel engaged Hal Novak, the owner of WHN Consulting, a utility consulting and expert witness company. Beyond providing regulatory expertise, Mr. Novak is also a Certified Public Accountant (CPA) in Tennessee and has assisted King's Chapel with its accounting requirements. Mr. Novak has approximately twenty-three years of utility, accounting and regulatory experience. Please refer to Mr. Novak's consulting agreement included in the production of documents. To date, Mr. Novak has been paid \$9,516.20 at the hourly rate of two hundred dollars (\$200.00).

13. Identify when James Johnson, referenced in paragraph 12 and Exhibit 6 of the Application, was retained by King's Chapel to operate the system referenced in the Application, and the terms of employment offered (i.e. rate of pay, duration of employment). If it is not

King's Chapel intention to hire Mr. Johnson as an employee, explain the type of relationship anticipated, and the terms of said relationship.

RESPONSE:

After a CCN is granted he will become an employee of King's Chapel Capacity. The rate of pay to Mr. Johnson will be \$40.00 per hour

14. Identify what individuals participated in the preparation of Exhibit 7 to the Application, and as to each such individual, state what portion of Exhibit 7 he or she prepared, and the basis for knowledge for the information included in those portions.

RESPONSE:

Mr Novak prepared the Company's proposed tariff referenced in Exhibit 7. Mr. Novak has over twenty-three (23) years of regulatory and utility experience.

15. Identify what interest, if any, King's Chapel believes that TWS has in the system that is the subject of the Application. If King's Chapel opines that TWS does not have any interest in the system, explain the basis for that opinion given that TWS engaged and paid a licensed contractor to construct the system, had a contract with a purported property owner to do so, and has not been paid in full pursuant to that contract.

RESPONSE

King's Chapel Capacity, as well as the developers and owners of the property, believe that TWS has no interest in the wastewater system that is the subject of the Application No contract exists between the property owner and TWS. Further, On Site Capacity Company has received \$265,000 in compensation for the partially built wastewater facility, but Ashby Communities, LLC alleges that the contractor, On Site Capacity Development Company, was overcompensated for the construction work associated with the wastewater system.

16. Other than documents filed in this proceeding, describe each substantive

communication between, on the one hand, a staff member or Director of the Tennessee

Regulatory Authority and, on the other hand, an attorney, consultant, or other representative of

King's Chapel concerning this Application or TWS. Specify the date, substance, and

participants to each such communication.

RESPONSE:

King's Chapel, its attorneys, consultants and other representatives have no record or

knowledge of any communication relating to the Application of King's Chapel, outside of the

documents formally filed in this proceeding, with any staff member or Director of the Tennessee

Regulatory Authority.

PRODUCTION REQUESTS

1. Please provide any and all documents used in assisting you in your responses to

the Interrogatories set out above.

RESPONSE:

See attached Complaint filed in Tennessee Wastewater Systems Inc., et al. v King's Chapel

Capacity, LLC (Case No: 31074) and all other documents attached hereto.

2. Please provide all documents related to the formation of King's Chapel including,

but not limited to, articles of organization, operating agreements and reports to the Tennessee

Secretary of State.

RESPONSE: See attached Articles of Organization

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3. Please provide all documents in your possession that relate to the financing of King's Chapel including, but not limited to, performance bonds, letters of credit and bank accounts.

RESPONSE: See attached letters of credit and performance bonds.

4. Please provide documents that support allegations you have made, to Williamson County and State of Tennessee authorities, regarding purported financial problems of TWS, and other entities with common ownership.

RESPONSE: See attached letter to Steven Butler, Assistant Attorney General for the State of Tennessee

5. Please provide all documents prepared for King's Chapel by the experts referenced in its Application at paragraph 11

RESPONSE: Expert relied on all documents in record or that have been produced in response to these Requests.

6. Please provide all documents in your possession related to the wastewater disposal system that is the subject of the Application including, but no limited to, those referencing its construction, financing and disputes related to its ownership.

RESPONSE: See the following attached hereto:

A. Facsimile regarding Professional Services Agreement and Sewer Contract for Subdivision

- B. Draft of a contract
- C. E-mail from Charles Pickney to John Powell
- D. Draft of Wastewater Treatment Facility Service Agreement
- E. Other miscellaneous correspondence
- F. Four (4) audio cassette recordings from meetings held in June 2004 and July 2004 will be provided to TWS, but Petitioners will supplement these responses with the TRA to include copies of these tapes.
- 7. Please provide a copy of all contracts King's Chapel has with any individual or entity including, but not limited to, employment agreements and joint venture agreements.

RESPONSE: See attached agreement between Hal Novak and King's Chapel Capacity

8. Please provide a copy of all personal guarantees executed by an individual involved with King's Chapel, for the benefit of King's Chapel.

RESPONSE See documents responding to Request #3 above.

9. Please provide a copy of all documents King's Chapel has filed with, or otherwise sent to, and local, state or federal authorities, for any reason.

RESPONSE: See attached correspondence to Jeff Hill.

10. Please provide all documents that evidence King's Chapel's interest to the real property that comprises the service area that is the subject of the Application.

RESPONSE: No documents exist at this time.

11. Please provide all documents that evidence King's Chapel's interest in the system that is subject of the Application.

RESPONSE: See response to Production Request #1 for a copy of a check for the sum of \$250,000. Petitioner will supplement these responses with a copy of another check for the sum of \$15,000.

Respectfully submitted,

FARRIS MATHEWS BRANAN BOBANGO HELLEN & DUNLAP, PLC

Charles B. Welch, Jr.

Krıstı Stout

Attorneys for Petitioner 618 Church Street, Suite 330 Nashville, TN 37219

(615) 726-1200

CERTIFICATE OF SERVICE

The undersigned hereby certified that the foregoing document has been served upon the following person/s by hand delivery or by United States Mail, with proper postage prepaid thereon:

Henry Walker, Esquire Boult, Cummings, Conners & Berry, PLC 414 Union Street, Suite 1600 P.O. Box Nashville, Tennessee 37219

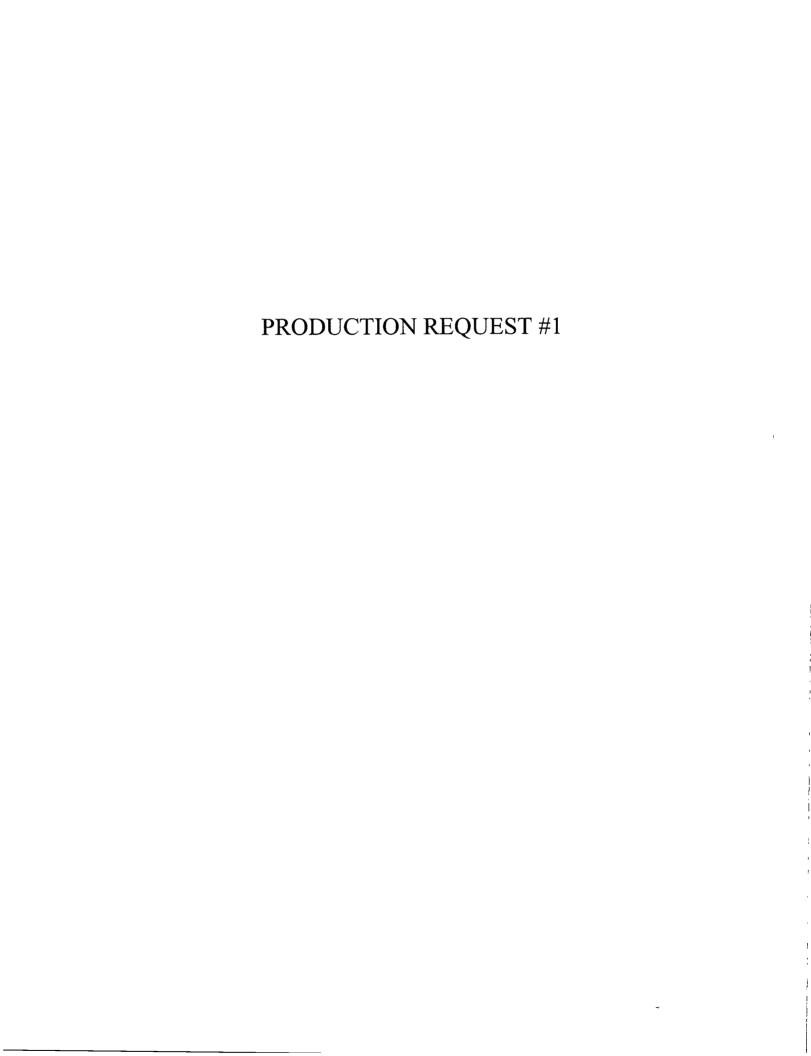
Richard Militana Mılıtana & Mılitana 5845 Old Highway 96 Franklin, Tennessee 37064

This 15th day of December 2004.

Charles B. Welch, Jr.

VERIFICATION OF INTERROGATORY RESPONSES

I, John Powell , first being duly sworn, affirm that the Interrogatory Responses set forth above are true, accurate, and complete, and that they are in no way misleading or calculated to withhold information that is available to me and is requested by the Interrogatories. I understand that my signature below is subject to penalties of perjury.			
Ву:	Signature of Authorized Representative for King's Chapel Capacity, LLC		
Tıtle [.]	Mauring Member		
STATE OF TEANESSE E COUNTY OF DAVIDSOAL Personally appeared before me the above no	amad Taha Panela		
Known to me personally or made known to me by on oath executed the above information.	satisfactory proof, who was duly sworn and		
	Notary Public TENNESSEE NOTARY My commission of particular counts.		
	My Commission Expires September 22, 2007		



CLED COPY

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY AT FRANKLIN

TENNESSEE WASTEWATER SYSTEMS, INC. and ON-SITE CAPACITY DEVELOPMENT OCOMPANY, Case No. 3/0/74

Plaintiffs, ON-SITE SYSTEMS, INC. and ON-SITE CAPACITY DEVELOPMENT OCOMPANY, OR OTHER OF THE OCOMPANY, OR OTHER OCOMPANY, OR OT

VERIFIED COMPLAINT

Come now the Plaintiffs, Tennessee Wastewater Systems, Inc., formerly known as On-Site Systems, Inc., and On-Site Capacity Development Company, and sue J. Powell Development, LLC, John Powell, Elaine Powell, C. Wright Pinson, Ashby Communities, LLC, Hang Rock, LLC, Arrington Meadows, LLC, and Kings Chapel Capacity, LLC. For cause of action, the plaintiffs would show to the Court as follows:

A. PARTIES

1. Tennessee Wastewater Systems, Inc is a Tennessee for-profit corporation, formerly known as On-Site Systems, Inc. ("TWS"). TWS is a public utility, authorized by the Tennessee Regulatory Authority ("TRA") to provide wastewater treatment systems within the bounds of the Milcrofton Utility District in Wılliamson County, Tennessee. TWS's principal place of business is in Davidson County, Nashville, Tennessee.

- On-Site Capacity Development Company is a Tennessee general partnership ("On-Site"). On-Site has common ownership with TWS, whose purpose is to develop and finance opportunities for TWS to provide wastewater treatment systems in Tennessee within the areas for which it is an approved TRA service provider. On-Site's principal place of business is in Davidson County, Nashville, Tennessee.
- 3. J. Powell Development, LLC is, based upon information and belief, a non-existent entity that is not registered with the Tennessee Secretary of State ("Powell Development"). John Powell, a resident of Williamson County, Brentwood, Tennessee, has represented himself to On-Site and TWS as the owner of Powell Development.
- 4. John Powell is an individual who resides, based upon information and belief, in Brentwood, Tennessee, and whose principal place of business is 1413 Plymouth Drive, Brentwood, Tennessee ("Mr. Powell").
- 5. Elaine Powell is an individual who resides, based upon information and belief, in Brentwood, Tennessee, and whose principal place of business is 1413 Plymouth Drive, Brentwood, Tennessee ("Mrs. Powell"). Mrs. Powell is, based upon information and belief, married to Mr. Powell.
- 6. C. Wright Pinson is an individual who resides, based upon information and belief, in Nashville, Tennessee at 408 Charles Gate Court. ("Dr. Pinson").
- 7. Ashby "Communities, LLC is, based upon information and belief, a Tennessee limited liability company, registered with the Tennessee Secretary of State, as of its formation date of May 13, 2004 ("Ashby") Ashby is its own registered agent for service, and its address is listed as 1413 Plymouth Drive, Brentwood, Tennessee.

- 8. Hang Rock, LLC is, based upon information and belief, a Tennessee limited liability company, registered with the Tennessee Secretary of State, as of its formation date of November 14, 2003 ("Hang Rock"). Hang Rock's agent for service is Mrs. Powell, and the address for service of which is listed as 1413 Plymouth Drive, Brentwood, Tennessee. Hang Rock is the owner of real property located in Williamson County, Tennessee, comprised of approximately 89.71 acres, located north of Highway 96 and east of State Route 252 ("Hang Rock Property").
- 9. Arrington Meadows, LLC is, based upon information and belief, a Tennessee limited liability company, registered with the Tennessee Secretary of State, as of its formation date of November 13, 2002 ("Arrington"). Arrington's agent for service is Mrs. Powell, and the address for service of which is listed as 1413 Plymouth Drive, Brentwood, Tennessee. Arrington is the owner of real property located in Williamson County, Tennessee, comprised of approximately 15 acres, located north of Highway 96 and east of State Route 252, adjacent to the Hang Rock Property ("Arrington Property").
- 10. Kings Chapel Capacity, LLC is, based upon information and belief, a Tennessee limited liability company, registered with the Tennessee Secretary of State, as of its formation date of April 13, 2004 ("Kings Chapel") Kings Chapel is its own agent for service, and the address for service of which is listed as 1413 Plymouth Drive, Brentwood, Tennessee. Kings Chapel is, as set forth in a petition it has filed with the TRA, to operate wastewater disposal systems, an affiliate of Ashby.

B. JURISDICTION AND VENUE

11. This Court has jurisdiction over this cause of action pursuant to T.C.A. § 16-11-101.

12. Venue is proper in this Court pursuant to T.C A. §§ 20-4-101 and 20-4-103.

C. FACTS

- 13. TWS and On-Site work with a related entity, Pickney Brothers, Inc, a Tennessee corporation that is also a general contractor licensed with the State of Tennessee ("Pickney Bros"). Pickney Bros. has common ownership with TWS and On-Site, and its purpose is to perform the general contracting work for wastewater treatment systems that are developed by On-Site and operated by TWS.
- 14. In 2003, the owners of On-Site, TWS and Pickney Bros. began discussions and negotiations with Mr. Powell, Mrs. Powell and Dr Pinson, purportedly representing Powell Development, regarding a subdivision it was developing in Williamson County, Tennessee, commonly known as "Meadowbrook Subdivision" ("Meadowbrook"). Based upon information and belief, Meadowbrook was to consist of the Hang Rock Property and certain portions of the Arrington Property. The plat for Meadowbrook was approved by the Williamson County Planning Commission on October 9, 2003
- 15. Powell Development, through Mr. Powell, Mrs. Powell and Dr. Pinson, represented itself as the developer of Meadowbrook. Based upon information and belief, and subsequent representations of the defendants, Powell Development is a non-existent entity, and Ashby was the actual developer. Regardless, the real property at issue was owned by Hang Rock and Arrington.
- 16. Powell Development, through Mr. Powell, Mrs. Powell and Dr. Pinson, on behalf of itself and Hang Rock and Arrington, and On-Site and TWS, on behalf of themselves and Pickney Bros., entered a contract for the development of a wastewater treatment system ("the System") for Meadowbrook on or about November 3, 2003 ("the Contract"). Powell

Development was identified in the Contract as the "developer," TWS as the "utility" and On-Site as the "contractor." On-Site's and TWS's intentions were, as they had in other Williamson County, Tennessee wastewater projects, to use Pickney Bros., its related entity that is a licensed general contractor, to do the actual construction work on the System. The Contract provided for Powell Development to pay On-Site and TWS a flat fee of \$550,000, during the course of construction of the sand filtration and drip irrigation portions of the System, and additional fees of \$3,366 per Meadowbrook lot, as and when sold to the end user. The subdivision plans provided for approximately 215 lots to be developed and sold, thus resulting in additional fees eventually owed totaling \$723,690. The Contract is attached as Exhibit 1.

- 17. Hang Rock and Arrington were third party beneficiaries of the Contract, as the owners of the real property comprising Meadowbrook, and on which the System was to be built, which enabled the development of the non-System portions of Meadowbrook.
- 18. On-Site performed under the Contract, causing Pickney Bros. to commence construction of the System on November 12, 2003. Consistent with the Contract terms, On-Site submitted a pay request for \$250,000, to Powell Development, on December 10, 2003. That pay request is attached as Exhibit 2.
- 19. TWS performed under the Contract, supervising, inspecting and approving the construction of the System by Pickney Bros, as commissioned by On-Site.
- In response to the pay request submitted by On-Site to Powell Development, Hang Rock paid On-Site \$250,000 on or about January 6, 2004. A copy of that check is attached as Exhibit 3.
- 21. Pickney Bros completed construction of the sand filtration and drip irrigation portions of the System on or before February 10, 2004. Therefore, as set forth in the Contract, as

of February 10, 2004, On-Site had satisfied its obligations to Powell Development with respect to the above-referenced flat fee, and was entitled to have been paid the entire remaining portion of the flat fee (i.e., \$300,000) during to course of said construction Powell Development has failed to pay any portion of said sum, which sum is currently owing. Powell Development is also obligated to pay the remainder of the contracted funds when the lots are sold.

- 22. Based upon information and belief, and prior communications between On-Site and Powell Development representatives, Powell Development takes the position it does not have to pay On-Site the remaining fee because On-Site is not a licensed general contractor. On-Site representatives have clearly explained that Pickney Bros, which is a licensed general contractor, built the System, on On-Site's behalf. Regardless, Powell Development has refused, and continues to refuse, to pay On-Site for the work performed under the Contract.
- 23. On-Site and Powell Development had a contract for On-Site to develop the System at Meadowbrook, which On-Site completed. Powell Development breached the Contract by failing to pay to On-Site the \$300,000 currently owing thereunder.
- 24. Hang Rock and Arrington were third party beneficiaries to the Contract, and have enjoyed the benefit of On-Site's completion, through Pickney Bros., of the sand filtration and drip irrigation portions of the System. Arrington owns the real property on which the System has been constructed, and has retained ownership of that real property, despite not having paid, either individually or through Powell Development, for the construction of the System. Hang Rock, as the adjacent real property will benefit from the System, and is currently being developed to use the System.
- 25. The Contract also obligates the parties to adhere to state and local regulations regarding the operation of utilities The applicable regulations require that, once the System is

complete, the System and land on which it sits be conveyed to the operator which, in this case, is TWS Powell Development, individually and through Hang Rock and Arrington, has failed to convey said real property, and thus continues to control and own that real property, despite the System itself being owned by TWS.

- 26. In addition to refusing to fulfill the obligations under the Contract, Mr. Powell, Mrs. Powell and Dr Pinson, individually, and through other entities, including Kings Chapel, have submitted an application with the TRA requesting a Certificate of Public Need and Convenience to operate a wastewater treatment and disposal system for a subdivision identified therein as the "Ashby Communities development" ("the Application"). Based upon information and belief, the Ashby Communities development is, in fact, Meadowbrook, and the wastewater treatment and disposal system Kings Chapel seeks to operate is the System, for which On-Site has not been paid, and which, pursuant to the Contract, TWS owns and has a right to operate. The Application, which is attached as Exhibit 4, identifies Mr. Powell, Mrs. Powell and Dr. Pinson, as the owners and financers of Kings Chapel.
- 27. Mr. Powell, Mrs. Powell and Dr. Pinson, individually, and through the other defendants, including Ashby, Hang Rock, Arrington and Kings Chapel, have attempted, and continue to attempt, to interfere with TWS's rights, pursuant to its certificate to operate wastewater disposal systems in Williamson County, Tennessee, to operate said systems. The Defendants' actions to interfere with TWS's operations include, but are not limited to, its submission of the Application to the TRA, in which it does not reference or mention the fact that the subject system is owned by another utility, or even that there is a dispute about that ownership and the rights to serve the area are held by TWS.

28. The Defendants, through the Application, have attempted, illegally, to obtain control and ownership of the System, contrary to the interests and rights of On-Site and TWS, based upon the Contract and TWS's authorization as a public utility, to operate the System.

D. CAUSES OF ACTION

COUNT I. BREACH OF CONTRACT

- 29. On-Site and TWS incorporate the factual allegations set forth in paragraphs 1-28 herein above by reference.
- 30. On-Site, TWS and Powell Development had a contract for the development and construction of the System, for certain payments to be made based upon that development and construction, and for the real property on which the System was built to be conveyed to TWS. Powell Development has breached the Contract by failing to make the contracted for payments, and also by failing to transfer ownership of the real property on which the System rests, to TWS.
- 31. Mr. Powell, Mrs. Powell and Dr. Pinson, through counsel, have represented that Powell Development was named as the party in interest in the Contract in error, and that the actual party in interest is Ashby. Thus, Ashby is additionally responsible to On-Site and TWS for the breach of contract failure to satisfy the developer's obligations thereunder.
- 32. Mr. Powell, Mrs. Powell and Dr. Pinson are individually responsible to On-Site and TWS for the failure to adhere to the terms of the Contract because Mr. Powell signed the Contract, on behalf of Powell Development, which was a nonexistent entity, and he, along with Mrs. Powell and Dr. Pinson, purported to represent Powell Development prior to the signing of the Contract, and throughout the parties' relations with each other. In addition, Ashby, the entity since represented as the real party in interest, was non-existent at the time the Contract was

executed, and the parties were negotiating Thus, Mr. Powell, Mrs. Powell and Dr. Pinson are individually liable for the obligations of Powell Development and Ashby

- 33. Hang Rock and Arrington are third party beneficiaries under the Contract, and had taken on some or all of Powell Development's obligations including, but not limited to, paying the fees owed to On-Site for the construction of the System. Hang Rock and Ashby are therefore also responsible to On-Site and TWS for the breach of the Contract upon which this action is based.
- 34. Powell Development's, Mr. Powell's, Mrs. Powell's, Dr Pinson's, Ashby's, Hang Rock's and/or Arrington's failure to adhere to the terms of the Contract will cause, and is causing, On-Site and TWS damage including, but not limited to, the loss of funds due and owing under the Contract, as well as the lost opportunity to operate the system.

COUNT II. CIVIL CONSPIRACY

- On-Site and TWS incorporate the factual allegations set forth in paragraphs 1-34 herein above by reference.
- 36. The Defendants' refusal to pay On-Site for the System, and the submission of the Application to the TRA, to assert ownership and control over the System, as herein described above, were carried out as a part of a wrongful and unlawful conspiracy to defraud, convert, and obtain the Plaintiffs' property by fraudulent and unlawful means and, as a result thereof, the Defendants have committed the tort of unlawful conspiracy under the common law of the State of Tennessee.
- 37. The Defendants acted in concert through their separate roles within their deceptive scheme to engage On-Site, refuse to pay On-Site for the System, refuse to allow TWS

to take its proper role as the utility operating the System, and obtaining permission to take over the System

38. As a direct and proximate result of the Defendants' concerted action, as set forth hereinabove and hereinafter, On-Site and TWS sustained injuries and damages for which they are entitled to recover compensatory and punitive damages.

COUNT III. TENNESSEE DECLARATORY JUDGMENT ACT

- 39. On-Site and TWS incorporate the factual allegations set forth in paragraphs 1-38 herein above by reference.
- 40. TWS is a "person" as defined in the Tennessee Declaratory Judgment Act ("the Act"), at T.C A. § 29-14-101, et seq. It is further an interested person under a written contract, and entitled to have its rights, status and legal relations established thereunder, entitling it to bring an action pursuant to the Act, as set forth at T.C.A. § 29-14-103 and 104.
- 41. TWS, pursuant to the Act, requests the Court declare that it is the owner of the System.

COUNT IV. INJUNCTIVE RELIEF

- On-Site and TWS incorporate the factual allegations set forth in paragraphs 1-41 herein above by reference.
- 43. Upon the declaration by the Court, pursuant to the Act, that TWS is the owner of the System, TWS requests the Court enter an injunction, ordering Powell Development, Mr. Powell, Mrs. Powell, Dr. Pinson, Ashby, Hang Rock, Arrington and/or Kings Chapel to convey to it the real property on which the System sits. Without said relief, TWS will continue to suffer irreparable injury for which no amount of damages are sufficient to compensate it.

PRAYER FOR RELIEF

WHEREFORE, premises considered, On-Site and TWS pray for the following relief:

- 1. That proper process issue and be served upon the defendants,
- 2. That the defendants be required to answer;
- 3. That this Court award On-Site and TWS damages and other relief, to which it is entitled, pursuant to the Contract;
 - 4. That this Court declare TWS to be the owner of the System:
- 5. That this Court enter an injunction ordering the defendants to convey the real property on which the System sits, to TWS; and
- 6. That this Court grant On-Site and TWS such other and additional relief as it deems just and equitable.

THIS IS THE PLAINTIFFS' FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS MATTER.

Respectfully Submitted,

ROCHELLE McCULLOCH & AULDS

BY:

Jere N McCULLOCH, #2768 109 Castle Heights Avenue North Lebanon, TN 37087 (615) 443-8751

BONE McALLESTER NORTON, PLLC

BY

ANNE C. MARTIN, #15536 KENNETH M LARISH, #23154 511 Union Street, Suite 1600 Nashville, TN 37219 (615) 238-6300 Attorneys for On-Site and TWS

VERIFICATION AND OATH

I, CHARLES PICKNEY, being first duly sworn according to law, make oath and affirm that I have read the foregoing Verified Complaint, know the contents thereof, and that the same is true and correct to the best of my knowledge, information and belief

TENNESSEE WASTEWATER SYSTEMS, INC. (f/k/a ON-SITE SYSTEMS, INC.)

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Before me, ANNE C. MARTIN, of the state and county aforementioned, personally appeared CHARLES PICKNEY, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be President of Tennessee Wastewater Systems, Inc., formerly known as On-Site Systems, Inc., the within named plaintiff, a Tennessee for-profit corporation, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President.

NOTARY PUBLIC

My Commission Expires:

1-26-08

We are surety for all court costs

BONE McALLESTER NORTON, PLLC

BY:

ANNEC MARTIN #15536

PRODUCTION REQUEST #2

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

DATE: 05/13/04 REQUEST NUMBER: 5127-2005 TELEPHONE CONTACT: (615) 741-2286 FILE DATE/TIME: 04/13/04 1502 EFFECTIVE DATE/TIME: 04/13/04 1502 CONTROL NUMBER: 0469590

TO: KING'S CHAPEL CAPACITY, LLC 1413 PLYMOUTH DRIVE BRENTWOOD, TN 37027

RE: KING'S CHAPEL CAPACITY, LLC ARTICLES OF ORGANIZATION -LIMITED LIABILITY COMPANY

CONGRATULATIONS UPON THE FORMATION OF THE LIMITED LIABILITY COMPANY IN THE STATE OF TENNESSEE WHICH IS EFFECTIVE AS INDICATED ABOVE.

A LIMITED LIABILITY COMPANY ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE LIMITED LIABILITY COMPANY'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE LIMITED LIABILITY COMPANY AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE LIMITED LIABILITY COMPANY TO ADMINISTRATIVE DISSOLUTION.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE LIMITED LIABILITY COMPANY CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A LIMITED LIABILITY COMPANY HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

ON DATE: 05/13/04

FROM: HANG ROCK LLC 1413 PLYMOUTH DR. RECEIVED: FEES \$900.00

\$0.00

BRENTWOOD, TN 37027-0000

TOTAL PAYMENT RECEIVED:

\$900.00

RECEIPT NUMBER: 00003508216 ACCOUNT NUMBER: 00460776



RILEY C DARNELL SECRETARY OF STATE



Department of State

Corporate Filings 312 Eighth Avenue North 6th Floor, William R Snodgrass Tower Nashville, TN 37243

ARTICLES OF ORGANIZATION (LIMITED LIABILITY COMPANY)

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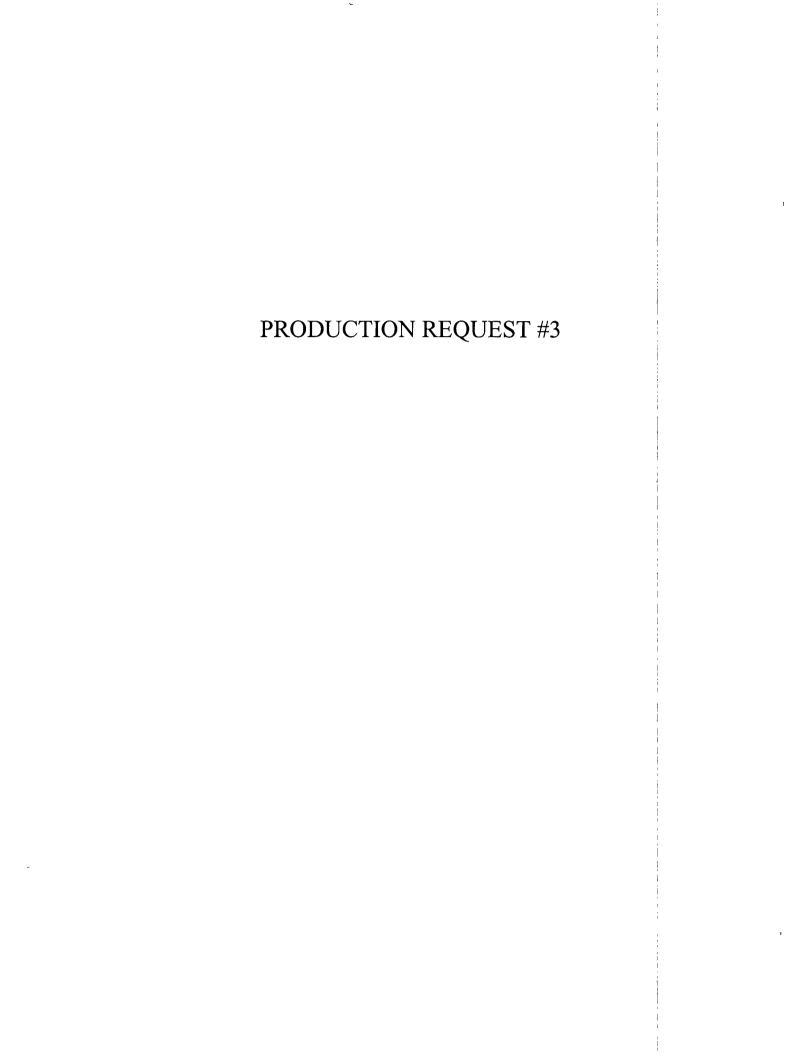
For Office Use Only

PH 5:102

The undersigned acting as organizer(s) of a Limited Liability Company under the provisions of the Tennessee Limited Liability Company Act, § 48–205–101, adopts the following Articles of Organization.

1 The name of the Limited Liability Company is

King's Chapel Capacity, LLC (NOTE: Pursuant to the provisions of § 48–207–101, each limited Liability Company name must contain the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.") 2 The name and complete address of the Limited Liability Company's initial registered agent and office located in the state of Tennessee is Kings Chapel Capacity, LLC (Name) 1413 Plymouth Drive, Brentwood, TN 37027 (State/Zip Code) (City) (Street Address) Williamson (County) 3 List the name and complete address of each organizer of this Limited Liability Company John Powell, 1413 Plymouth Drive, Brentwood, TN 37027 (Include Street Address, City, State and Zip Code) (Name) (Street Address, City, State and Zip Code) (Name) (Street Address, City, State and Zip Code) (Name) The Limited Liability Company will be (NOTE: PLEASE MARK APPLICABLE BOX) ☐ Board Managed ☐ Member Managed 5 Number of members at the date of filing 6. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time is (Not to exceed 90 days) _ , Time _ The complete address of the Limited Liability Company's principal executive office is 1413 Plymouth Drive, Brentwood, TN 37027 (State/Country/Zip Code) (City) (Street Address) Period of Duration Other Provisions. 10. THIS COMPANY IS A NON-PROFIT LIMITED LIABILITY COMPANY (Check if applicable) ☐ Signature (manager or member authorized to sign by the Limited Liability Company) ohu Name (typed or printed) Signer's Capacity Filing Fee \$50 per member (minimum fee = \$300, maximum fee = \$3,000) **RDA 2458** SS-4249 (Rev 7/01)



DRAFT

@PO@8

IRREVOCABLE LETTER OF CREDIT P001545 PAGE 1

LETTER OF CREDIT NUMBER: P001545 ISSUANCE DATE: SEPTEMBER 30, 2004

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APPLICANT: SBFAKE

KING'S CHAPEL COMMUNITY ASSOCIATION, INC. KING'S CHAPEL CAPACITY, LLC

BENEFICIARY: WILLIAMSON COUNTY PLANNING COMMISSION 1320 WEST MAIN STREET, SUITE 400 FRANKLIN, TN 37064

FOR USD 998,208.00 (NINE HUNDRED NINETY EIGHT THOUSAND TWO HUNDRED EIGHT 00/100 U.S. DOLLARS)

DATE OF EXPIRATION: OCTOBER 01, 2006 PLACE OF EXPIRATION: AT OUR COUNTERS

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. P001545 IN YOUR FAVOR FOR ACCOUNT OF THE ABOVE-REFERENCED APPLICANT AVAILABLE BY YOUR DRAFTS DRAWN ON US PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF THE AMOUNT REFERENCED ABOVE WHEN ACCOMPANIED BY THIS LETTER OP CREDIT AND THE POLLOWING DOCUMENT:

BENEFICIARY'S DATED CERTIFICATE SIGNED UNDER OATH BY THE SECRETARY OF WILLIAMSON COUNTY PLANNING COMMISSION CERTIFYING THAT "THE ACCOUNTEE (KING'S CHAPEL COMMUNITY ASSOCIATION, INC., KING'S CHAPEL CAPACITY, LLC HAS DEFAULTED UNDER THAT AGREEMENT COVERING WASTEWATER TREATMENT AND DISPOSAL SYSTEM BETWEEN THE ACCOUNTEE (KING'S CHAPEL COMMUNITY ASSOCIATION, INC., KING'S CHAPEL CAPACITY, LLC AND THE PLANNING COMMISSION, AND THE AMOUNT OF THE DAMAGE IS THE AMOUNT OF THE ACCOMPANYING DRAFT."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE

CONTINUED ON NEXT PAGE

IRREVOCABLE LETTER OF CREDIT P001545 PAGE 2
DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR TWO YEARS
FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE,
UNLESS SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SEND
NOTICE TO YOU BY REGISTERED MAIL OR OVERNIGHT COURIER THAT WE
ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH
ADDITIONAL PERIOD.

ALL DRAFTS MUST REFERENCE THE NUMBER AND ISSUE DATE OF THIS CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS SPECIFIED ABOVE TO THE BELOW ADDRESS ON OR BEFORE OCTOBER 01, 2006, OR ANY AUTOMATICALLY EXTENDED DATE.

ALL DOCUMENTS ARE TO BE REMITTED TO: SUNTRUST BANK, INTERNATIONAL DIVISION ATTN: LETTER OF CREDIT DEPARTMENT 25 PARK PLACE, 16TH FLOOR, MC 3706 ATLANTA, GEORGIA 30303

SINCERELY,

SUNTRUST BANK

DRAFT

AUTHORIZED SIGNATURE BONNIE ANDERSON VICE PRESIDENT

Application and Agreement for Standby Irrevocable Letter of Credit

10/ 03/ 6003 10:01 1AA

Please issue an irrevocable letter of credit substantially in accordance with this application and transmit it as indicated below. In issuing the credit you are expressly authorized to make such changes from the terms herein below set forth as you, in your sole discretion, may deem advisable provided that such changes shall not vary the principal terms hereof.

To: Issuing Bank ("Bank")	(For Bank Use Only)
SunTrust Bank	SunTrust LC Reference Number
25 Park Place, N E.	
Attanta Coercia 20202	Amount in words
Atlanta, Georgia 30303 Select One	\$
Select One	U.S Dollars
	(U.S. \$) 998,208.00
SWIFT ADDRESS	Place of expiry:
For account of [Applicant(s)] with complete address:	Select One 10-01-06
C. Wright Pinson	Expiry Date, 20
408 Charles Gate Court	, 20
Nashville, TN 37215	Special Conditions
	Reduction includes reduction schedule forming an integral part of this application
Account Body and oddense (IS Let.	Automatic Renewal The Letter of Credit will be
Account Party and address (if different from Applicant)	automatically renewed as described in section 5 page 2.
King's Chapel Community Association, Inc.	
King's Chapel Capacity, ILC	Issue Letter of Credit in favor of Advising/Confirming bank
• •	requesting the issuance of a quarantee/performance bond
	with an expiry date of
	
	Partial drawings Select One
In favor of (Beneficiary) with complete address	Other Special Conditions.
Williamson County Plannine Commission	
1320 West Main Street	
Franklin, TN 37064	_
	
All blank lines and blocks indicating terms	and Conditions of this Application and Agreement
Abbusery reducests party to issue its illevocable i etter of Ca	edit, pursuant to the terms and conditions of this Agreement
a Confirming Bank, in which case the chaft will be drown at	e address shown above unless the Letter of Credit is to be confirmed by
a Confirming Bank, in which case the draft will be drawn at 2 A certificate purportedly signed by the Beneficiary or a drive	signt on the Confirming Bank at the address shown above, authorized officer (or one describing himself therein as such officer) of the
Beneficiary stating:	
A certificate of default stoned under	the the chine Capacity, lies the
A certificate of default signed under oath	the secretary of the Williamon County
terms of the agreement regarding Wastnessen	countee (6 weight throw) has not complied with the
planning comission and the accounts (C. H.	r riegiment and Disposal System between the
local government which amount shall be ide	ntical to the face amount of the accompanying
draft to due.	to the late amount of the accompanying

STB-SBLC (7/03)

	or Clean Credits We underst. that by not instructing SunTrust Bank to require an cumentation that would evidence a default on our part, the presentation of a draft, regardless of any disputes or claims made outside this Standby letter of Credit, constitutes a draw which would obligate us to reimburse SunTrust Bank or Issue letter of credit in accordance with the attached document (Applicant must sign attachment which has a clear reference to this application).
;	3. Other documents
4	Original of the Letter of Credit and any amendments.
5	Renewal Automatic Renewal. The Letter of Credit will be automatically renewed for years future expiration date provided the Applicant satisfies the Bank's credit requirements at that time and pays the applicable renewal fee of \$100.00 in addition to commissions as detailed in number 7 below. If the Letter of Credit is not renewed, the Bank will provide notice to the Beneficiery 60 days prior to expiration.
6 7.	Notwithstanding the above, in no event may the Letter of Credit be renewed beyond, 20

Additional Terms and Conditions

In addition to the preceding terms and conditions described in this Application and Agreement ("Agreement"), the Applicant further agrees with the Bank as follows

- 1 The Bank is authorized to honor drafts presented to it pursuant to the Letter of Credit and in accordance with the terms thereof. It is expressly agreed that the Bank shall honor any draft without requiring additional evidence other than as stated in the Letter of Credit.
- 2 The Applicant promises to pay to the Bank, on demand and in immediately available funds at any of its offices, or at such place as the Bank may in writing designate
 - (a) The amount of each draft or other request for payment ("draft") drawn under or purporting to be drawn under the Letter of Credit.
 - (b) Applicant further agrees to pay you, on demand, your commissions, fees and any and all charges and expenses (including all charges for legal services) which may be paid or incurred by Bank in connection with the credit, including but not limited to costs of complying with any and all applicable governmental exchange regulations and all correspondent's charges, for our account. Any amounts which are not paid when due shall bear interest, payable on demand, until paid in full. Interest payable hereunder shall be at a fluctuating rate, calculated on the basis of 360-day year and actual days elapsed, which is four percent (4%) above the prime rate with each change in the prime rate automatically and immediately changing the rate applicable hereto. For purposes hereof, "prime rate" means the fluctuating rate in effect at the time in question that is publicly announced by you from time to time as being your prime rate hereafter in effect. Such payment shall be subject to a minimum late payment fee. Applicant shall not be entitled a rebate of any portion of the fee paid to Bank if the credit shall expire or is pald.
- (c) All expenses which the Bank may pay or incur in connection with issuing, confirming or advising the Letter of Credit, including but not limited to Telex/Swift transmissions fee, overnight domestic courier fee, foreign courier fee and faxing fee, any fees charged to the Bank by any other third parties in connection with the issuance, advise/confirmation, negotiation, amendment or collection of the Letter of Credit, any stamp taxes, recording taxes or similar taxes or fees payable in connection with the Letter of Credit or this Agreement, and reasonable attorney's fees and disbursements, and other dispute resolution expenses to protect or enforce the Bank's rights and remedies under or in connection with the Letter of Credit, this Agreement or other related documents including to respond to any notice of fraud, forgery, illegality, presentation under the Letter of Credit, or to defend against any action in which an injunction is sought or obtained.
- (d) Upon issuance of the Letter of Credit, the Applicant agrees to pay the Issuance Fee described above. In addition, and as long as the Bank is obligated under the Letter of Credit, the Applicant agrees to pay the commission described above, and in the absence of such description, in such amounts and at such commission rates as the Bank may in its discretion reasonably amount more than 15 days past due; and (ii) a reasonable amendment fee for processing any amendment or extension to the

(e)	As to drafts which are payable currency other than United States currency, the paid by Applicant will be the
	amount required to purchase burrency from Bank at Bank's current selling rate, lable transfers to the place of payment
	in the currency and amount in which such draft was drawn. If there is then no current selling rate generally offered by Bank for
	effecting such cable transfers, Applicant agrees on demand to pay Bank an amount, which Bank then deems necessary to pay
	or provide for the payment of Applicant's obligations hereunder.

By prior arrangement satisfactory to Bank, as to any draft payable in currency other than United States currency, Applicant may pay to Bank the amount of such draft by making such amount immediately available to Bank by the deposit of such amount (in the currency in which such draft is payable) to an account maintained by Bank at a financial institution to be specified by Bank under edvice to the Bank.

Notwithstanding the manner of payment or the currency in which any draft is drawn, Applicant shall remain liable for any deficiency which may result if the actual cost to Bank or settlement of Bank's obligation under the Credit proves to be in excess of the amount so paid by Applicant and Applicant shall be entitled to a refund, without interest, of any excess payment made to Bank

- 3 The Applicant agrees that the Bank, its affiliates, correspondents, subsidiaries or agents (collectively called "Agents") shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law involving directly or indirectly, any matter ansing out of or related to this Agreement or the relationship established hereunder, absent any Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. Without limiting the generality of the foregoing, the Bank and its Agents shall not be deemed to have acted with gross negligence or willful misconduct if they (a) act in reliance upon any oral, telephonic, telegraphic, electronic or written request or notice believed in good faith to have been authorized by the Applicant, whether or not given or signed by an authorized person; and (b) receive, accept or pay, as complying with the terms of the Letter of Credit, any drafts or other documents, otherwise in order, which may be signed by any person or entity acting as the representative of or in the place of the party in whose name the Letter of Credit provides that any drafts or other documents should be drawn or issued. Under no circumstances will the Bank or any Agent be liable to the Applicant for any special, consequential gunitive, exemplary, incidental or other damages for lost profits. This paragraph will survive the termination or cancellation of this Agreement.
- 4. As security for the performance of all present or future obligations of every kind and description, however evidenced, of the Applicant, whether such obligations are direct or indirect, fixed or contingent, liquidated or unliquidated, including any extensions, amendments, modifications or renewals thereof ("Obligations"), the Applicant hereby grants the Bank a security interest in and the right of possession and disposal of the following collateral ("Collateral")
- (a) All of the Applicant's rights and causes of action against any and all perties arising from or in connection with any contract of sale or purchase of property covered by the Letter of Credit or any other transaction involving the Letter of Credit, or any guaranties, agreements or other undertakings (including those in effect between the Applicant and any Account Party named in the Letter of Credit), credits, policies of insurance or other assurances in connection therewith; and
- (b) To the extent permitted by applicable law, all tangible and intangible property, rights, claims and demands of every kind (including deposit balances) now or hereafter belonging to the Applicant and which may now or hereafter be in the possession, custody or control of, or in transit to, or set apart for the Bank or its Agents for any purpose, and

(-)	The following specifically described collateral		1
(C)	THE IOROWING Specifically described colleteral	Morgan Keegan 🖸 06007751	j ,
` '	g -promoting accombate conditions	WYBON KCCBON & COOCIAN	

The terms and covenants of the security instruments(s) covering such collateral are hereby made a part of this Agreement and incorporated herein by this reference. The above described property shall be held by Bank as collateral for: (a) any and all obligations and liabilities of Applicant to Bank hereunder, and (b) any and all other obligations and liabilities of Applicant to Bank, whether now existing or hereinafter ansing, due or to become due, whether individually or jointly with others, and whether direct, indirect, absolute or contingent as maker, endorser, guarantor, surety or otherwise.

- 5 Applicant represents and warrants to the Bank that:
 - (a) Applicant is a _____ duly organized and existing under the laws of the State of _____, and has all requisite power and authority to conduct its business, to own its properties and to execute and deliver and perform all of its obligations under this Application
 - (b) The execution and delivery by Applicant of, and the performance by Applicant of its obligations hereunder have been duly authorized by all requisite action on the part of Applicant, and do not and will not (i) violate any provision of any law, rule or regulation, or any order, writ, judgment, injunction, or ruling of any court or governmental agency, or (ii) be in conflict with, result in a breach of, or constitute, with notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Applicant is a party or by which Applicant or any of its property is bound or under its organizational documents
- (c) The Application, when executed and delivered to the Bank, will be the legal, valid and binding agreement of Applicant, enforceable against Applicant in accordance with its terms.
- 6. Upon the occurrence of any of the following events of default, the Bank, at its option, may declare the amount of the Letter of Credit and any or all of the other Obligations of the Applicant to the Bank immediately due and payable and the Bank may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable law and all rights provided herein, all of which rights and remedies shall, to the full extent permitted by law, be cumulative
 - (a) The Applicant fails to pay when due any Obligation or is otherwise in default under this Agreement or any other agreement;
 - (b) The falsity or the appearance of falsity made by the Applicant in this Agreement or in connection with this Agreement or any other agreement with the Bank;
 - (c) The failure of the Applicant to observe or perform any of the terms or provisions of this Agreement, or any such default by any guarantor of this Agreement,

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- (d) The breach of any of the Apple? It's representations of warranties in this Agreement or Thy other agreement with the Bank;
- (e) The death, dissolution, mergy insolidation or termination of existence of the App. I or any guarantor;
- (f) The insolvency or inability to pay debts as they mature of the Applicant or any guarantor, or the application for the appointment of a receiver for any of them, or the filing of a petition under any provision of the Bankruptcy Code or other insolvency law or statute by or against any of them, or any assignment for the benefit of creditors by or against any of them;
- (g) The entry of a judgment against the Applicant or any guarantor or the issuance or service of any attachment, levy or garnishment against the Applicant or any guarantor or the repossession or selzure of property of any of them.
- (h) Any deterioration or impairment of the Collateral or any part of the Collateral or any decline or depreciation in the value or market value of the Collateral (whether actual or reasonably anticipated), which causes the Collateral, in the judgment of the Bank, to become unsatisfactory as to character or value;
- A material change in the ownership, control or management of the Applicant or any guarantor unless such change is approved by the Bank or the sale or transfer by any Applicant or any guarantor of all or substantial all of such party's assets other than in the ordinary course of business;
- (j) As permitted by applicable law, a determination by the Bank a material adverse change in the financial condition, business results, assets, or liabilities of the Applicant or any guarantor has occurred since the date of this Agreement; or
- (k) Applicant shall fall to pay any principal, premium, interest or if any event shall occur or any condition shall exist in respect of any indebtedness, [including but not limited to ______1, owed by Applicant the effect of which is to cause (or permit the holder or owner of such indebtedness to cause) such indebtedness or any portion thereof, to become due pnor to its stated maturity or prior to its regularly scheduled dates of payment.

The Bank shall have no obligation or commitment to issue, extend, or amend or renew any Letter of Credit if an Event of Default has occurred and is continuing. On the date of any issuance, extension, renewal or amendment of any Letter of Credit, Applicant represents and warrants that (i) no Event of Default exists or would result from the issuance hereof and (ii) that all the representations and warrantles herein are true and correct on and as of such date.

- 7. The Applicant shall comply with all foreign and US laws, rules and regulations now or hereafter applicable to the execution, delivery and performance by the Applicant of this Agreement or to the transactions related to the Letter of Credit.
- 8. The Bank and its Agents shall not be liable or responsible for, and the Applicant's duty to reimburse shall not be affected by (a) acts, omissions or authority of any other including without limitation, the Beneficiary; (b) the validity, sufficiency, genuineness or accuracy of any documents, drafts or other papers or of any signature or endorsement thereon furnished pursuant to, purporting to be furnished pursuant to, or relating to the Letter of Credit; (c) the breach of any underlying agreement or contract between the Applicant, the Beneficiary or any third parties; (d) errors, omissions, interruptions, destruction or delays in the transmission of any draft, demand, document, advice or message by mail, cable, telex or otherwise; or (e) any act or omission or insolvency or failure in business of any other person.
- 9. The Applicant agrees to indemnify and hold the Bank harmless from and against any and all (a) loss, damage, flability or expense by reason of any act or omission pursuant to its instructions or otherwise arising from or in connection with the Letter of Credit, and the occurrence of any one or more of the contingencies listed in paragraph 8 shall not affect or impair the Bank's rights and powers under this Agreement or the Applicant's obligation to reimburse the Bank under this Agreement, or any other action taken by the Bank in connection with the Letter of Credit other than loss or damage resulting from the Bank's gross negligence or willful misconduct, (b) costs and expenses, whether suit be brought or not, including reasonable attorneys' fees, court and collection costs of all claims or legal proceedings arising out of the Bank's issuance of the Letter of Credit or incident to the collection of amounts owed by the Applicant or the enforcement of the Bank's rights under this Agreement, including, without limitation, legal proceedings relating to any court order, injunction or other process or decree restraining or seeking to restrain the Bank from paying any amount under the Letter of Credit; and (c) loss, damage, liability, or expenses by reason of laws of other states and territories of the United States of America, and, if applicable, foreign laws and usages.
- 10. Applicant is responsible for approving the text of the Letter of Credit as issued by Bank and as received by any Beneficiary. Applicant's ultimate responsibility for the final text shall not be affected by any assistance Bank may provide such as drafting or recommending text or by Bank's use or refusal to use text submitted by Applicant. Bank does not represent or warrant that the Letter of Credit will satisfy Applicant's requirements or intentions. Applicant is responsible for the suitability of the Letter of Credit for Applicant's purposes. Applicant will examine the copy of the Letter of Credit, and any other documents sent by Bank in connection with the Letter of Credit, and shall notify Bank of any non-compliance with Applicant's instructions, and of any discrepancy in any document under any presentment or other irregularity, within 3 business days after Applicant receives or should have received any of such documents (the "Required Time"); provided, however, if the end of the Required Time falls on a weekend or Bank holiday, the deadline shall be extended to the end of the next business day. Applicant 's failure to give timely and specific notice during the Required Time shall automatically waive Applicant's right to object, and will be deemed to have authorized or ratified Bank's action or inaction, and preclude Applicant from raising any objection as a defense or claim against Bank.
- 11. Upon the occurrence and during the continuation of any event of default or in the event of fees imposed upon the Bank by other parties in connection with the issuance, amendment, maintenance or collection of the Letter of Credit, the Applicant agrees that the Bank may, to the extent permitted by applicable law, set off against the balance due under this Agreement any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, held by or in the possession of the Bank or its Agents to the credit of or for the Applicant's account, without prior notice to or consent by the Applicant, but the Bank shall provide prompt written notice to the Applicant of such set off. The Bank's rights under this paragraph are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.
- 12. The Applicant agrees to execute and deliver to the Bank any other documents and instruments the Bank may from time to time reasonably require in connection with the Letter of Credit in form satisfactory to the Bank, and will join the Bank in executing financing statements or other documents and pay the cost of filing the same, including all recordation, transfer and other taxes or fees.

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13. Should the Bank, after the date pageof, determine that the adoption of any law or regarding capital adequacy, or any change in the interpretation or a pistration thereof, has or would have the effect of: cing the Bank's rate of return under this Agreement or under the Letter of credit to a level below that which the Bank could have achieved but for such adoption or change, by an amount which the Bank considers to be material, then, from time to time, 30 days after written demand by Bank, the Applicant shall pay to the Bank such additional amounts as will compensate the Bank for such reduction. Each demand by the Bank shall be made in good faith and shall be accompanied by a certificate claiming compensation under this paragraph and stating the amounts to be paid to it hereunder and the basis therefore.

14. In the event of any change, modification or amendment to the Letter of Credit, this Agreement shall be binding upon the Applicant with regard to the Letter of Credit as so changed, modified or amended and to any action taken by the Bank or any of its Agents in

accordance with such change, modification or amendment.

- 15. The terms and conditions of this Agreement may not be waived or amended except with the written consent of the Bank. The Bank may waive any default or remedy any default without walving the default remedied or any other prior or subsequent default. The Bank's failure to exercise any right or take any action under this Agreement shall not constitute a waiver of that or any other right or action. The Bank is expressly authorized to make such minor changes in the terms set forth herein as it, in its sole discretion, deems necessary to issue the Letter of Credit provided that no such changes shall vary the principal terms hereof.
- 16. If the Agreement is signed by two or more Applicants or guaranteed by an additional party, it shall be the joint and several obligation of each Applicant. The Bank at its discretion may accept an Application, or seek instruction, from any Applicant regarding a Letter of Credit, including, without limitation, any amendment thereto or waiver of any discrepancy thereunder, and until Bank at the office at which the relevant Letter of Credit is issued actually receives written notice of revocation, each Applicant shall be bound by and hereby affirms the instructions of the other.
- 17. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unanforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 18. This Agreement shall become effective upon its receipt by the Bank provided, however, that the Bank shall not be obligated to issue the Letter of Credit until this Agreement is accepted by the Bank's authorized officer.
- 19. This Agreement shall be binding upon the Applicant, its successors and assigns, and shall inure to the benefit of the Bank, its successors, transferees and assigns
- 20. The International Standby Practices (ISP98) or such later revision reflecting generally accepted practice, custom and usage of standby letters of credit shall in all respects be deemed a part of this Agreement as fully as if incorporated herein and shall apply to the Letter of Credit.

 The Applicant (s)/ Account Party (ies) and bank agree that ISP 98 shall not govern this agreement, but instead the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce (hereinafter called the "UCP") shall in all respects be deemed a part of this Agreement as fully as if incorporated herein and shall apply to the Letter of Credit.

The Applicant agrees that certain material events and occurrences relating to the Letter of Credit and this Agreement bear a reasonable relationship to the laws of _ . The laws of such jurisdiction and the federal law of the United States shall govern the construction of this Agreement and the rights and duties of the parties, except to the extent such laws are inconsistent or in variance with the UCP or ISP98, as applicable, then to the extent permitted by law, the UCP or the ISP 98, as applicable, shall govern or be read to explain the applicable law. The UCP or ISP 98 shall serve, in the absence of proof to the contrary, as evidence of standard practice with respect to the subject matter hereof.

21. IN ANY PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, APPLICANT IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN ANY COUNTY IN THE STATE OF GEORGIA AND AGREES NOT TO RAISE ANY OBJECTION TO THE JURISDICTION OR TO THE LAYING OR MAINTAINING OF THE VENUE OF ANY SUCH PROCEEDING IN THE JURISDICTION.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, APPLICANT AND BANK HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT AND ANY OTHER DOCUMENT OR INSTRUMENT RELATED THERETO.

(Entity or Individual's Name)	
PINI Pr	
Wringer	(Affix a corporate seal,
(Signature)	if applicable)
(Type Signer's Name)	
(Title)	
ate:	
policant(s):	
pplicant(s): (Entity or Individual's Name)	
	(Affix a corporate seal,
(Signature)	if applicable)
(Type Signer's Name)	
(Title)	
, ,	
For Bank Use Only. ACCEPTED: This letter of credit application - 1	application and agreement to your Relationship Manager for approval. the customer, amount, auto renewal terms, and expiration date of which are ify that I have appropriate lending authority and/or have obtained the same.
SunTrust Bank	Customer Name:
Ву:	· · · · · · · · · · · · · · · · · · ·
Date:	COMPASS Obligor No:
Name:	COMPASS Obligation Number:
Title:	Performance Standby
Officer Number: Center Addres	58:
	Email:
Standby L/Cs, Mail Code 3706, 25 Park Place, Atlar	et 340-8129. Send Original to SunTrust Bank, International Division — Attn: ata, Georgia 30303. If you require assistance please call Client Services at 1-issuance, please clearly indicate by attaching to cover of application, the
evidence of fax sent to International.	

@PO@8

IRREVOCABLE LETTER OF CREDIT P001540 PAGE

1

LETTER OF CREDIT NUMBER: P001540 ISSUANCE DATE: SEPTEMBER 30, 2004

APPLICANT: SBFAKE

DRAFT

KING'S CHAPEL COMMUNITY ASSOCIATION, INC. KING'S CHAPEL CAPACITY, LLC BENEFICIARY: WILLIAMSON COUNTY PLANNING COMMISSION 1320 WEST MAIN STREET, SUITE 400 FRANKLIN, TN 37064

FOR USD 651,000.00 (SIX HUNDRED FIFTY ONE THOUSAND 00/100 U.S. DOLLARS)

OCTOBER 06, 2006 DATE OF EXPIRATION: PLACE OF EXPIRATION: AT OUR COUNTERS

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. P001540 IN YOUR FAVOR FOR ACCOUNT OF THE ABOVE-REFERENCED APPLICANT AVAILABLE BY YOUR DRAFTS DRAWN ON US PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF THE AMOUNT REFERENCED ABOVE WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND THE FOLLOWING DOCUMENT:

BENEFICIARY'S DATED CERTIFICATE SIGNED UNDER OATH BY THE SECRETARY OF WILLIAMSON COUNTY PLANNING COMMISSION CERTIFYING THAT "THE ACCOUNTEE (KING'S CHAPEL COMMUNITY ASSOCIATION, INC., KINGS CHAPEL CAPACITY, LLC., HAS DEFAULTED UNDER THAT AGREEMENT COVERING: BACK-UP WASTEWATER TREATMENT AND DISPOSAL SYSTEM BETWEEN THE ACCOUNTEE (KING'S CHAPEL COMMUNITY ASSOCIATION, INC., KINGS CHAPEL CAPACITY, LLC.,) AND THE PLANNING COMMISSION, AND THE AMOUNT OF THE DAMAGE IS THE AMOUNT OF THE ACCOMPANYING DRAFT."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR TWO YEARS

CONTINUED ON NEXT PAGE

IRREVOCABLE LETTER OF CREDIT P001540 PAGE 2

FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE,
UNLESS SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SEND
NOTICE TO YOU BY REGISTERED MAIL OR OVERNIGHT COURIER THAT WE
ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH
ADDITIONAL PERIOD.

ALL DRAFTS MUST REFERENCE THE NUMBER AND ISSUE DATE OF THIS CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS SPECIFIED ABOVE TO THE BELOW ADDRESS ON OR BEFORE OCTOBER 06, 2006, OR ANY AUTOMATICALLY EXTENDED DATE.

ALL DOCUMENTS ARE TO BE REMITTED TO: SUNTRUST BANK, INTERNATIONAL DIVISION ATTN: LETTER OF CREDIT DEPARTMENT 25 PARK PLACE, 16TH FLOOR, MC 3706 ATLANTA, GEORGIA 30303

SINCERELY,

SUNTRUST BANDRAFT

AUTHORIZED SIGNATURE BONNIE ANDERSON VICE PRESIDENT

Application and Agreement for Standby Irrevocable Letter of Credit

Please issue an irrevocable letter of credit substantially in accordance with this application and transmit it as indicated below. In issuing the credit you are expressly authorized to make such changes from the terms herein below set forth as you, in your sole discretion, may deem advisable provided that such changes shall not vary the principal terms hereof.

To: Issuing Bank ("Bank") SunTrust Bank 25 Park Place, N E Attn: Standby Letter of Credit Dept., 16 th Floor Atlanta, Georgia 30303 Select One.	(For Bank Use Only) SunTrust LC Reference Number: Amount in words: \$Six bundred and fifty-one thousand 00/100 U.S. Dollars
	(U.S \$)\$ 651,000.00
SWIFT ADDRESS:	Place of expiry:
For account of [Applicant(s)] with complete address:	Select One
C_Wright Pinson	Expiry Date: 16-06, 2006
408 Charles Gate Court	
Nashville, TN 37215	Special Conditions:
	Reduction: includes reduction schedule forming an integral part of this application
King's Chapel Community Association, INc.	Automatic Renewal. The Letter of Credit will be automatically renewed as described in section 5 page 2.
King's Chapel Capacity, LLC	Issue Letter of Credit in favor of Advising/Confirming bank requesting the issuance of a guarantee/performance bond, with an expiry date of
	Partial drawings Select One
In favor of (Beneficiary) with complete address:	Other Special Conditions
Williamson County Planning Commission	
1320 West Main Street Suite 400	_
Franklin, TN 37064	-
The Applicant requests Bank to issue its irrevocable Letter of Co	and Conditions of this Application and Agreement Paragraph 20 must be completed Predit, pursuant to the terms and conditions of this Agreement.
Beneficiary's draft(s) drawn at sight on SunTrust Bank at the a Confirming Bank, in which case the draft will be drawn at.	e address shown above unless the Letter of Credit is to be confirmed by sight on the Confirming Bank at the address shown above, authorized officer (or one describing himself therein as such officer) of the
A certificate of default signed under oath	by the secretary of the Williamson County
planning Commission certifing that the acc	countee (C that he Person) has not complied with
between the Planning Commission and the ac	countee (CWright Pinson) and the amount of approx
damage to the local government which amoun accompanying draft, is due.	t shall be identical to the face amt, of the

STB-SBLC (7/03)

(e) As to grants which are payable in currency other than United States currency, the amount to be paid by Applicant will be the amount required to purchase o currency from Bank at Bank's current selling raf. cable transfers to the place of payment in the currency and amount i ich such draft was drawn. If there is then no cun delling rate generally offered by Bank for effecting such cable transfers, Applicant agrees on demand to pay Bank an amount, which Bank then deems necessary to pay or provide for the payment of Applicant's obligations hereunder.

By prior arrangement satisfactory to Bank, as to any draft payable in currency other than United States currency, Applicant may pay to Bank the amount of such draft by making such amount immediately available to Bank by the deposit of such amount (in the currency in which such draft is payable) to an account maintained by Bank et a financial institution to be specified by Bank under advice to the Bank.

Notwithstanding the manner of payment or the currency in which any draft is drawn, Applicant shall remain liable for any deficiency which may result if the actual cost to Bank or settlement of Bank's obligation under the Credit proves to be in excess of the amount so paid by Applicant and Applicant shall be entitled to a refund, without interest, of any excess payment made to Bank.

- 3. The Applicant agrees that the Bank, its affiliates, correspondents, subsidiaries or agents (collectively called "Agents") shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law involving directly or indirectly, any matter arising out of or related to this Agreement or the relationship established hereunder, absent any Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. Without limiting the generality of the foregoing, the Bank and its Agents shall not be deemed to have acted with gross negligence or willful misconduct if they (a) act in reliance upon any oral, telephonic, telegraphic, electronic or written request or notice believed in good faith to have been authorized by the Applicant, whether or not given or signed by an authorized person; and (b) receive, accept or pay, as complying with the terms of the Letter of Credit, any drafts or other documents, otherwise in order, which may be signed by any person or entity acting as the representative of or in the place of the party in whose name the Letter of Credit provides that any drafts or other documents should be drawn or issued. Under no circumstances will the Bank or any Agent be flable to the Applicant for any special, consequential, punitive, exemplary, incidental or other damages for lost profits. This paragraph will survive the termination or cancellation of this Agreement.
- 4. As security for the performance of all present or future obligations of every kind and description, however evidenced, of the Applicant, whether such obligations are direct or indirect, fixed or contingent, liquidated or unliquidated, including any extensions, amendments, modifications or renewals thereof ("Obligations"), the Applicant hereby grants the Bank a security interest in and the right of possession and disposal of the following collateral ("Collateral"):
- All of the Applicant's rights and causes of action against any and all parties arising from or in connection with any contract of sale or purchase of property covered by the Letter of Credit or any other transaction involving the Letter of Credit, or any guaranties, agreements or other undertakings (including those in effect between the Applicant and any Account Party named in the Letter of Credit), credits, policies of insurance or other assurances in connection therewith; and
- To the extent permitted by applicable law, all tangible and intangible property, rights, claims and demands of every kind (including deposit balances) now or hereafter belonging to the Applicant and which may now or hereafter be in the possession, custody or control of, or in transit to, or set apart for the Bank or its Agents for any purpose, and
- The following specifically described collateral SunTrust Securities # T1F104710

The terms and covenants of the security instruments(s) covering such collateral are hereby made a part of this Agreement and incorporated herein by this reference. The above described property shall be held by Bank as collateral for: (a) any and all obligations and liabilities of Applicant to Bank hereunder, and (b) any and all other obligations and liabilities of Applicant to Bank, whether now existing or hereinafter ansing, due or to become due, whether individually or jointly with others, and whether direct, indirect, absolute or contingent as maker, endorser, guarantor, surety or otherwise.

- Applicant represents and warrants to the Bank that:
 - (a) Applicant is a duly organized and existing under the laws of the State of authority to conduct its business, to own its properties and to execute and deliver and perform all of its obligations under this , and has all requisite power and
 - (b) The execution and delivery by Applicant of, and the performance by Applicant of its obligations hereunder have been duly authorized by all requisite action on the part of Applicant, and do not and will not (i) violate any provision of any law, rule or regulation, or any order, writ, judgment, injunction, or ruling of any court or governmental agency, or (ii) be in conflict with, result in a breach of, or constitute, with notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Applicant is a party or by which Applicant or any of its property is bound or under its organizational
- (c) The Application, when executed and delivered to the Bank, will be the legal, valid and binding agreement of Applicant, enforceable against Applicant in accordance with its terms.
- 6. Upon the occurrence of any of the following events of default, the Bank, at its option, may declare the amount of the Letter of Credit and any or all of the other Obligations of the Applicant to the Bank immediately due and payable and the Bank may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable law and all rights provided herein, all of which rights and remedies shall, to the full extent permitted by law, be cumulative:
- (a) The Applicant falls to pay when due any Obligation or is otherwise in default under this Agreement or any other agreement;
- (b) The falsity or the appearance of falsity made by the Applicant in this Agreement or in connection with this Agreement or any other agreement with the Bank;
- (c) The failure of the Applicant to observe or perform any of the terms or provisions of this Agreement, or any such default by any

	or Clean Credits: We under that by not instructing SunTrust Bank to require default on our part, the pullation of a draft, regardless of any disputes or claunade outside this Standby letter of credit, constitutes a draw which would obligate us to reimburse SunTrust Bank. or Susceptibility is accordance with the attached document (Applicant must sign attachment which has a clear reference to this application).
3	Other documents:
4.	Original of the Letter of Credit and any amendments.
5.	The state of overland any amaziments.
.	Renewal. Automatic Renewal: The Letter of Credit will be automatically renewed for
3.	Renewal. Es Automatic Renewal: The Letter of Credit will be automatically renewed for 2 years future expiration date provided the Applicant provided the Appli

Additional Terms and Conditions

In addition to the preceding terms and conditions described in this Application and Agreement ("Agreement"), the Applicant further

- The Bank is authorized to honor drafts presented to it pursuant to the Letter of Credit and in accordance with the terms thereof. It is
 expressly agreed that the Bank shall honor any draft without requiring additional evidence other than as stated in the Letter of
 Credit.
- 2. The Applicant promises to pay to the Bank, on demand and in immediately available funds at any of its offices, or at such place as
 - (a) The amount of each draft or other request for payment ("draft") drawn under or purporting to be drawn under the Letter of
 - (b) Applicant further agrees to pay you, on demand, your commissions, fees and any and all charges and expenses (including all charges for legal services) which may be paid or incurred by Bank in connection with the credit, including but not limited to account. Any amounts which are not paid when due shall bear interest, payable on demand, until paid in full. Interest payable (4%) above the prime rate with each change in the prime rate automatically and immediately changing the rate applicable by you from time to time as being your prime rate hereafter in effect. Such payment shall be subject to a minimum late terminate, or if the amount avaitable under the letter of credit shall be reduced prior to the end of the period for which such fee
- (c) All expenses which the Bank may pay or incur in connection with issuing, confirming or advising the Letter of Credit, including but not limited to Telex/Swift transmissions fee, overnight domestic courier fee, foreign courier fee and faxing fee, any fees charged to the Bank by any other third parties in connection with the issuance, advise/confirmation, negotiation, amendment or of Credit or this Agreement, and reasonable attorney's fees and disbursements and other dispute resolution expenses to related documents including to respond to any notice of fraud, forgery, illegality, presentation under the Letter of Credit, or to defend against any action in which an injunction is sought or obtained.
- (d) Upon issuance of the Letter of Credit, the Applicant agrees to pay the Issuance Fee described above. In addition, and as long as the Bank is obligated under the Letter of Credit, the Applicant agrees to pay the commission described above, and in the absence of such description, in such amounts and at such commission rates as the Bank may in its discretion reasonably amount more than 15 days past due; and (ii) a reasonable amendment fee for processing any amendment or extension to the

- (a) The breach of any of the Applicant's representations or warranties in this Agreement or any other agreement with the Bank;
 (b) The death, dissolution, merg ponsolidation or termination of existence of the Ar. Int or any quarantor;
- (f) The insolvency or inability till debts as they mature of the Applicant or any gual or, or the application for the appointment of a receiver for any of them, or the filing of a petition under any provision of the Bankruptcy Code or other insolvency law or statute by or against any of them, or any assignment for the benefit of creditors by or against any of them;
- (9) The entry of a judgment against the Applicant or any guarantor or the issuance or service of any attachment, levy or garnishment against the Applicant or any guarantor or the repossession or seizure of property of any of them
- (h) Any deterioration or impairment of the Collateral or any part of the Collateral or any decline or depreciation in the value or market value of the Collateral (whether actual or reasonably anticipated), which causes the Collateral, in the judgment of the Bank, to become unsatisfactory as to character or value;
- (I) A material change in the ownership, control or management of the Applicant or any guarantor unless such change is approved by the Bank or the sale or transfer by any Applicant or any guarantor of all or substantial all of such party's assets other than in the ordinary course of business;
- As permitted by applicable law, a determination by the Bank a material adverse change in the financial condition, business results, assets, or liabilities of the Applicant or any guarantor has occurred since the date of this Agreement; or
- (k) Applicant shall fail to pay any principal, premium, interest or if any event shall occur or any condition shall exist in respect of any indebtedness, [including but not limited to ____], owed by Applicant the effect of which is to cause (or permit the holder or owner of such indebtedness to cause) such indebtedness or any portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment.

The Bank shall have no obligation or commitment to issue, extend, or amend or renew any Letter of Credit if an Event of Default has occurred and is continuing. On the date of any issuance, extension, renewal or amendment of any Letter of Credit, Applicant represents and warrants that (i) no Event of Default exists or would result from the issuance hereof and (ii) that all the The Applicant about the control of the control

- 7. The Applicant shall comply with all foreign and US laws, rules and regulations now or hereafter applicable to the execution, delivery and performance by the Applicant of this Agreement or to the transactions related to the Letter of Credit.
- 8. The Bank and its Agents shall not be liable or responsible for, and the Applicant's duty to reimburse shall not be affected by (a) acts, omissions or authority of any other including without limitation, the Beneficiary; (b) the validity, sufficiency, genuineness or be furnished pursuant to, or relating to the Letter of Credit; (c) the breach of any underlying agreement or contract between the draft, demand, document, advice or message by mail, cable, telex or otherwise; or (e) any act or omission or insolvency or failure in business of any other person.
- 9. The Applicant agrees to indemnify and hold the Bank harmless from and against any and all (a) loss, damage, liability or expense by reason of any act or omission pursuant to its instructions or otherwise arising from or in connection with the Letter of Credit, and under this Agreement or the Applicant's obligation to reimburse the Bank under this Agreement, or any other action taken by the Bank in connection with the Letter of Credit other than loss or damage resulting from the Bank's gross negligence or willful costs and expenses, whether suit be brought or not, including reasonable attorneys' fees, court and collection amounts owed by the Applicant or the enforcement of the Bank's rights under this Agreement, including, without limitation, legal proceedings relating to any court order, injunction or other process or decree restraining or seeking to restrain the Bank from paying any amount under the Letter of Credit; and (c) loss, damage, hability, or expenses by reason of laws of other states and
- 10. Applicant is responsible for approving the text of the Letter of Credit as issued by Bank and as received by any Beneficiary. Applicant's ultimate responsibility for the final text shall not be affected by any assistance Bank may provide such as drafting or recommending text or by Benk's use or refusal to use text submitted by Applicant. Bank does not represent or warrant that the for Applicant's purposes. Applicant's requirements or intentions. Applicant is responsible for the suitability of the Letter of Credit connection with the Letter of Credit, and shall notify Bank of any non-compliance with Applicant's instructions, and of any have received any of such documents (the "Required Time"); provided, however, if the end of the Required Time falls on a suitability of the Required Time shall automatically waive Applicant's right to object, and will be deemed to have Bank.
- 11. Upon the occurrence and during the continuation of any event of default or in the event of fees imposed upon the Bank by other parties in connection with the issuance, amendment, maintenance or collection of the Letter of Credit, the Applicant agrees that the Bank may, to the extent permitted by applicable law, set off against the balance due under this Agreement any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, held by or in the possession of the Bank or its Agents to the credit of or for the Applicant's account, without prior notice to or consent by the Applicant, but the Bank rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.
- 12. The Applicant agrees to execute and deliver to the Bank any other documents and instruments the Bank may from time to time reasonably require in connection with the Letter of Credit in form satisfactory to the Bank, and will join the Bank in executing financing statements or other documents and pay the cost of filing the same, including all recordation, transfer and other taxes or fees.

- snould the bank, after the date hereof, determine that the adoption of any law or regulation regarding capital adequacy, or any change in the interpretation or a vistration thereof, has or would have the effect of vicing the Bank's rate of return under this Agreement or under the Letter of vidit to a level below that which the Bank could have chieved but for such adoption or change, by an amount which the Bank considers to be material, then, from time to time, 30 days after written demand by Bank, the Applicant shall pay to the Bank such additional amounts as will compensate the Bank for such reduction. Each demand by the Bank shall be made in good faith and shall be accompanied by a certificate claiming compensation under this paragraph and stating the amounts to be paid to it hereunder and the basis therefore.
- 14. In the event of any change, modification or amendment to the Letter of Credit, this Agreement shall be binding upon the Applicant with regard to the Letter of Credit as so changed, modified or amended and to any action taken by the Bank or any of its Agents in accordance with such change, modification or amendment.
- 15. The terms and conditions of this Agreement may not be waived or amended except with the written consent of the Bank. The Bank may waive any default or remedy any default without waiving the default remedied or any other prior or subsequent default. The Bank's failure to exercise any right or take any action under this Agreement shall not constitute a waiver of that or any other right or action. The Bank is expressly authorized to make such minor changes in the terms set forth herein as it, in its sole discretion, deems necessary to issue the Letter of Credit provided that no such changes shall vary the principal terms hereof
- 16. If the Agreement is signed by two or more Applicants or guaranteed by an additional party, it shall be the joint and several obligation of each Applicant. The Bank at its discretion may accept an Application, or seek instruction, from any Applicant regarding a Letter of Credit, including, without limitation, any amendment thereto or walver of any discrepancy thereunder, and until Bank at the office at which the relevant Letter of Credit is issued actually receives written notice of revocation, each Applicant shall be bound by and hereby affirms the instructions of the other.
- 17. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 18 This Agreement shall become effective upon its receipt by the Bank provided, however, that the Bank shall not be obligated to issue the Letter of Credit until this Agreement is accepted by the Bank's authorized officer.
- 19. This Agreement shall be binding upon the Applicant, its successors and assigns, and shall inure to the benefit of the Bank, its successors, transferees and assigns.
- 20. The International Standby Practices (ISP98) or such later revision reflecting generally accepted practice, custom and usage of standby letters of credit shall in all respects be deemed a part of this Agreement as fully as if incorporated herein and shall apply to the Letter of Credit. The Applicant (s)/ Account Party (les) and bank agree that ISP 98 shall not govern this agreement, but instead the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce (hereinafter called the "UCP") shall in all respects be deemed a part of this Agreement as fully as if incorporated herein and shall apply to the Letter of Credit.
 - The Applicant agrees that certain material events and occurrences relating to the Letter of Credit and this Agreement bear a reasonable relationship to the laws of _____. The laws of such jurisdiction and the federal law of the United States shall govern the construction of this Agreement and the rights and duties of the parties, except to the extent such laws are inconsistent or in variance with the UCP or ISP98, as applicable, then to the extent permitted by law, the UCP or the ISP 98, as applicable, shall govern or be read to explain the applicable law. The UCP or ISP 98 shall serve, in the absence of proof to the contrary, as evidence of standard practice with respect to the subject matter hereof.
- 21. IN ANY PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, APPLICANT IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN ANY COUNTY IN THE STATE OF GEORGIA AND AGREES NOT TO RAISE ANY OBJECTION TO THE JURISDICTION OR TO THE LAYING OR MAINTAINING OF THE VENUE OF ANY SUCH PROCEEDING IN THE JURISDICTION.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, APPLICANT AND BANK HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT AND ANY OTHER DOCUMENT OR INSTRUMENT RELATED THERETO

from

LETTER OF CREDIT FORM

WILLIAMSON COUNTY PLANNING COMMISSION

IRREVOCABLE DOCUMENTARY LETTER OF CREDIT

1.	Date of Teams
2	Date of Issue
2.,	Credit No. of Issuing Bank
3.	and no. of Advising Bank
4.	wderaind Bank
5.	ACCOUNTER
6.	Beneficiary, Mail To
7.	Beneficiary, Mail To Latest Performance Date Latest Date for Norotical
8.	page tot wedoctation
9.	Maximum Amount
1 (10)	We hereby issue this documentary letter of credit in your (th beneficiary's) favor which is available against your drafts a Bank, Credit No. Gertificate of defeations accompanied by the following document.
	commission and the accountee and the agreement between the planning local government, which amount shall be identical to the face amount of the accompanying draft.
11.	We hereby engage with the bona-fide holders of all drafts or documents presented under and in compliance with the terms of this letter of credit that such drafts or documents will be duly honored upon presentation to
	The amount of each drawing must be endorsed on the reverse of this letter of credit by the negotiating bank.
	The advising bank is requested to advise this letter of credit without engagement of their part.
	BANK
	Authorized Signature, Issuing Bank
	Authorized Signature, Issuing Bank
	his letter Ef credit is for
P	enformane/maintenance w. treatment.
\	Systen.
-	

999,208

PERFORMANCE/MAINTENANCE BOND FOR WASTEWATER TREATMENT AND DISPOSAL SYSTEM

is hereby presented by Chapelerance of Preserved (the "Principal") by Jon Two to ("Surety Company") and by Owner/Developer Achby Companing Commission") and the WATER AND WASTEWATER AUTHORITY of WILLIAMSON COUNTY, TENNESSEE ("County"), this IZ day of October, 2005 in the amount of Mine Hunter Noth Eight Thomas Two Hunter & fa wastewater treatment and disposal system, which Bond shall bind Principal, its heirs, personal representatives, executors, administrators, successors and assigns jointly and severally.

disposal system to serve a Project known as Kings Chope and as a result of such proposal has submitted a Final Site Plan of a Project known and designated as Kings Chope Section ("Project") which contains said proposed alternative wastewater treatment and disposal system on the 12 day of August, 2004 before the Planning Commission; and

WHEREAS, approval by the Planning Commission is a condition precedent to the right of the Principal and the Developer/Owner of the Project, if different from Principal, to obtain building permits necessary to begin construction on the Project; and

WHEREAS, the Planning Commission is unwilling to approve said Final Plan until all required improvements and facilities are constructed, installed and completed, or until a bond is executed and filed with the Planning Department of County, and

WHEREAS, the Planning Commission may in lieu of the pror construction of said wastewater treatment and land disposal systems accept, pursuant to Section 1 10 of the Regulations for Wastewater Treatment and Land Disposal Systems for Williamson County, Tennessee, a security bond payable to the County in an amount equal to 150% of the cost for the wastewater treatment and disposal systems, along with a security bond for a "back-up" wastewater treatment and disposal system, which "back-up" bond is agreed to in a separate performance/mair tenance bond agreement, and the Planning Commission is willing to accept such bonds and approve said Final Plan, and

build the wastewater treatment and land disposal system is Six Lundred: sty First Thousand - and 00/100ths Dollars (\$665, 832.00), and

WHEREAS, Principal and the Developer/Owner of the Project, and deferent from Principal, desire to have such Final Plan of said Project in order to commence construction of all improvements related to the Design Development Report, the Detailed Soil Investigation Report and the Final Plan;

NOW, THEREFORE, in consideration of the mutual covenant; and promises contained herein the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Within one (1) year from the date hereof, Principal shall construct, install and complete the aforementioned wastewater treatment and disposal systems, which work shall include all of said improvements, utilities and facilities above-mentioned as shown or the Final Plan, Design Development Report, and Detailed Soil Investigation Report and also as stated herein or as otherwise required by the Final Plan, Design Development Report and Detailed Soil Investigation Report and,

in particular, all sewer mains, facilities, instrumentalities, buffer requirements reporting mechanisms, and all required appurtenances.

2. Principal shall do all of said work in a proper and work nanlike manner to the satisfaction of Williamson County and in accordance with all regulations of the Williamson County Planning Commission and any other applicable laws, rules, regulations, coces, or ordinances.

3. Principal shall fully maintain and keep in good working or ler the aforementioned wastewater treatment and disposal system for so long as the property described in the Final Plan shall be used for the purposes shown on said Final Plan, as stated herein, or as of terwise required by said Final Plan.

4. These Bonds shall be held for a minimum of three (3) years following the date on which 80% build-out of the Project is reached unless the Planning Commission requires, in accordance with the terms of this Bond, a draft or drafts on said Letter of Credit.

5. Principal shall obtain final approval and acceptance of the work by the Planning Commission as required by the regulations of the Planning Commission, and the Tennessee Department of Environment and Conservation.

6. In the event the Planning Commission determines that the Principal has failed to meet the obligations required by these Bonds, the Planning Commission may require a draft or drafts on said Letter of Credit for such amounts as it may determine to be proper.

The Typon compliance with the terms and provisions of these Bonds and upon final approval and acceptance of the work by the Planning Commission as confirmed by action of the Planning Commission and properly recorded in the minutes of same, this obligation secured by these Bonds shall be null and void.

IN WITNESS WHEREOF the undersigned have duly executed the Agreement on the date first set forth above.

PRINCIPAL

Signed and executed this 12 day of October, 2004.

By fould (Signature)

(Corj orate Seal)

Printed: John E. Powerce

Title: Prosident, Kings Chapel Communit Association, Inc.

STATE OF TENNESSEE) COUNTY OF WILLIAMSON)
Personally appeared before me Charles Personally and State the within named Ohn E Powell, the Principal, with whom I am personally acquainted, and who acknowledged that he executed the within ins rument for the purpose therein contained.
Witness my hand and official seal on the 12 day of Chan, 2004. Notary Public 11, 00, 3)
My Commission Expires 11-01-02
OWNER/DEVELOPER
Signed and executed this 12 day of Getober, 2004.
By: for fourth (Signature) (Corporate Seal)
Printed: John & Powell
Title: muglnomgen Ashby Communifies LCC
STATE OF TENNESSEE) COUNTY OF WILLIAMSON)
Personally appeared before me county in a Notal Public in and for said County and State the within named on towel the Principal, with whom I am personally acquainted, and who acknowledged that he executed the within its trument for the purpose therein contained.
Witness my hand and official seal on the 12 day of Other, 2004. Notary Public
My Commission Expires 11-27-04
SURETY COMPANY
Signed and executed this 12 day of actube 200 4
By: Mary Plants (Signature) (Corporate Seal) Printed MARY L. CARLS ON
Printed MARY L. CARLSON
Title: A.V.P.
STATE OF TENNESSEE) COUNTY OF WILLIAMSON)
Personally appeared before me Charlotte Racoch a Notary Public in and for said County and State the within named Your Causson, the Principal, with whom I am

personally acquainted, and who acknowledged that he executed the within instrument for the purpose therein contained Witness my hand and official seal on the day of Other, 200 Notary Public My Commission Expires 11-27-04
WILLIAMSON COUNTY, TENNESSEE
Approved this day of, 200_
By (Signature)
Printed:
Title:
AuSauge Plant Performance Rond wnd

681.000

PERFORMANCE/MAINTENANCE B OND FOR "BACK-UP" WASTEWATER TREATMENT A ND DISPOSAL SYSTEM

is hereby presented by Kings Condition and the Water of Credit #Pools to the W LLIAMSON COUNTY Company"), and by Owner/Developer Albs Commission") and the WATER AND WASTEWATER AUTHORITY of WILLIAMSON COUNTY, TENNE 3SEE ("County"), this 12 day of October, 2001 in the amount of Six Hundred Fifty one Lugard and 00/100ths Dollars (\$150,000 .00) for the construction and maintenance of a wastewater treatment and disposal system, which Bond shall bind Principal, its heirs, personal representatives, executors, administrators, successors and assigns jointly and severally

WHEREAS, Principal has proposed the use of an alternative veastewater treatment and disposal system to serve a Project known as Kines Chapel and as a result of such proposal has submitted a Final Site Plan of a Project known and designated as Kines Chapel Section ("Project") which contains said proposed alternative wastewater treatmen and disposal systems on the 12 day of August 2004 before the Planning Commission; and

WHEREAS, approval by the Planning Commission of a Final Site Plan is a condition precedent to the right of the Principal and the Developer/Owner of the Project if different from Principal to obtain building permits necessary to commence construction on said Project; and

WHEREAS, the Planning Commission is unwilling to approve said Final Plan until all required improvements and facilities are constructed, installed and completed, or until appropriate bonds are executed and filed with the Planning Department of County; and

WHEREAS, the Planning Commission may in lieu of the pror construction of said wastewater treatment and land disposal system accept a security bond parable to the County in an amount equal to 150% of the cost for the wastewater treatment and disposal system, along with a security bond for a "back-up" wastewater treatment and disposal system, and the Planning Commission is willing to accept such bonds and approve said Final Plan; and

WHEREAS, pursuant to Section 1 10 of the Regulations for Waster ater Treatment and Land Disposal Systems for Williamson County, Tennessee, a back-up performance bond must equal 150% of the cost of either: (1) connecting to an existing publicly-owned treatment works owned and operated by a public municipal utility, or (2) constructing, installing, and completing a "back-up" facility that will duplicate the wastewater and disposal system proposed; and

WHEREAS, Principal and the Developer/Owner of the Project, is different from Principal, desire to have such Final Plan of said Project in order to commence construction of all improvements related to the Design Development Report, the Detailed Soil Investigation eport and the Final Plan;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Within one (1) year, Principal shall construct, install and conplete the aforementioned wastewater treatment and disposal system, which work shall include all of said improvements, utilities and facilities above-mentioned as shown on said Final Plan, Design Development Report and Detailed Soil Investigation Report and also as stated herein or as otherwise required by said Final

Plan, Design Development Report and Detailed Soil Investigation Report and, in particular, all sewer mains, facilities, instrumentalities, buffer requirements, reporting mechanisms, and all required appurtenances.

- 2 Principal shall do all of said work in a proper and we kmanlike manner to the satisfaction of Williamson County and in accordance with all regulations of the Williamson County Planning Commission and any other applicable laws, rules, regulations, codes, or ordinances.
- 3. Principal shall fully maintain and keep in good working order the aforementioned wastewater treatment and disposal system for so long as the property described in the Final Plan shall be used for the purposes shown on said Final Plan, as stated herein, or as otherwise required by said Final Plan.
 - 4. This Bond is equal to 150% of the cost of either

 - constructing, installing, and completing a "back-up" facility that will duplicate the wastewater and disposal system proposed (Total Cost \$\frac{34,000.00}{24,000.00}).

The cost of connecting to an existing publicly-owned treatment works must include the cost of all required modifications to the treatment system so that wastewater can be ischarged to the publicly-owned treatment works (including new sewer facilities and POTW connection fees). The cost of a "back-up" facility must include the cost of constructing a new wasteward treatment and disposal system.

- 5. This Bond shall be held by the Planning Commission and this Bond Agreement shall be effective for the anticipated design life of the wastewater treatment and disposal system, but in no case shall this Bond be held and this Bond Agreement be effective less than ten (10) years from 80% build-out of the Project unless the Planning Commission requires, in accordance with the terms of this Bond, a draft or drafts on said Letter of Credit.
- 6. After completion of all the work required by this Bond, Frincipal shall obtain final approval and acceptance of the work by the Planning Commission as required by the regulations of the Planning Commission, and the Tennessee Department of Environmer, and Conservation.

- In the event the Planning Commission determines that the P incipal has failed to meet the obligations required by this Bond, the Planning Commission may require a draft or drafts on said Letter of Credit for such amounts as it may determine to be proper
- Upon compliance with the terms and provisions of this Bor I, including the minimum 8. bond period, and upon final approval and acceptance of the work by the Planning Commission as confirmed by action of the Planning Commission and properly recorded in the minutes of same, this obligation secured by this Bond shall be null and void.

IN WITNESS WHEREOF the undersigned have duly executed this Agreement on the date

first set forth above. **PRINCIPAL** Signed and executed this 12 day of of 2004. (Corporate Seal) Printed: Jaha E. Powell Title PresideNT, Kings Chapel Commoning Association, INC. STATE OF TENNESSEE COUNTY OF WILLIAMSON Personally appeared before me a Notary Public in and for said County and State the within named , the Principal, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purpose therein contained. Witness my hand and official seal on the 2 day of Octobe 2004 My Commission Expires **SURETY COMPANY** Signed and executed this 2 day of October 200 (Corporate Seal) mary L. Ca Printed: STATE OF TENNESSEE

COUNTY OF WILLIAMSON

Į	Personally appeared before me Hawte Pow a Notary Public in and for said County and State the within named with the Processing, with whom I am personally acquainted, and who acknowledged that he executed the within it strument for the purpose therein contained. Witness my hand and official seal on the day of the within it strument for the purpose therein contained. Notary Public My Commission Expires 1 - 2204					
	2.2) Commission Emphres 11 21 C 1					
	OWNER/DEVELOPER					
	Signed and executed this 12 day of october, 2004.					
	By Corporate Seal) (Corporate Seal)					
	Printed John E. Pawell					
	Title mag/member Pohby Commenties LLC					
	WILL I A MCON COVING THE TRANSPORTE					
	WILLIAMSON COUNTY, TENNESSEE					
	Approved this day of, 200					
	By(Signature)					
	Printed					
	Title:					

A \Sewer_Plant_Performance_Bond_Redundant wpd

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Law Offices

MILITANA & MILITANA

St Petersburg Office: 150 Second Ave N, 16th Floor St Petersburg, FL 33701

Miami Office. 8801 Biscayne Blvd Miami, FL 33138 Reply to: Tennessee Office 5845 Old Hwy 96 Franklin, TN 37064 (615) 799-5800

Supreme Court of the United States
United States Tax Court
IIth Circuit Court of Appeals Atlanta, Georgia
All State Courts Tennessee * Florida
Federal Court Middle District Tennessee
Federal Court Middle District of Florida
Supreme Court Tennessee

Primary Response # (813) 714-2833 (24 hr) (6 15) 799-6358 (fax)

Richard Militana, Esq. FL-TN *BJ Militana, Esq. FL-N} (1912-1992)

November 29, 2004

SENT VIA FACSIMILE (615) 532-2910 (confirmed by office record)

Office of the Attorney General Attn: Steven Butler, Assistant Attorney General 425 5th Avenue North, 3rd Floor Nashville, Tennessee

Re:

Matter:

Kings Chapel Subdivision/Tennessee Wastewater Systems, Inc.;

Onsite Systems, Inc.; On Site Capacity Development Company;

Pickney Brothers, Inc.

Subject:

Unlawful conduct/Request for formal investigation and action.

Dear Mr. Butler:

With regards to the meeting set for Monday, November 29, 2004 at your offices I was surprised, given the information previously provided by my client to your office, that the agenda for the meeting was not set by your office in the form of an ongoing investigation of the Tennessee Wastewater Systems, Inc. ("TWS"), On Site Capacity Development Company ("OCDC") and Pickney Brothers, Inc. ("PBI") (hereinafter cumulatively revered to as "Pickney entities"). Notwithstanding, I can understand where the difficulty might lie in your office understanding and assessing the circumstances of this matter in that the Pickney conspiracy and misconduct lies in a horizontally integrated multi-agency scheme to defraud the public as well as various State Agencies, including the Contracting and Engineering Boards, TRA and TDEC. The Pickney entities accomplish this by secreting profits, concealing costs, forcing contracts under duress between their related companies, all of which is enabled by the wastewater CCN granted by the TRA to TWS, and all specifically calculated to increase sewer costs to the public and maximize profits to the Pickney entities on all levels involving the CCN. This is reflected by Williamson County enjoying the highest wastewater sewer costs in the State. The admitted "common ownership" of the Pickney Companies, enable them to cumulatively defraud the public and defeat rules, regulations and laws applicable to each agency each independent of the other.

A prime example of this was evidenced at the last TRA hearing regarding the Intervention by TWS on the application of Kings Chapel Capacity, LLC for a CCN wherein a Board Member in granting the Intervention, noted that the contract attached to TWS's Petition to Intervene may well be unlawful (another Agencies responsibility) it had no bearing on the ruling permitting TWS to Intervene thereby ignoring at this point both the unlawful contract and the fact that TRA received formal notice from TDEC of TDEC's intention to terminate the State Operating Permit of TWS on the intervened site which would preclude TWS from operating the plant under any circumstances and that the unlawful contract would prevent any unlicensed Pickney entity from returning to the site to perform any function defined under the Contractors Act of 1996. However, it was TWS who attached the "unlawful" contract to its Petition to Intervene to support the intervention and it therefore became relevant as TWS grounds for intervention. The conspiracy by the Pickney entities is further facilitated by an apparent lack of interagency cooperation and communication, much like that being suffered by the Federal CIA, FBI and State Department, with each agency acting so independent of the other that such schemes became not only possible but given the tunnel vision of each agency, plausible.(in essence the left hand doesn't know or care what the right hand may be doing) Pickney's have themselves given view to this scheme in the sworn complaint filed in Williamson County asserting almost no legal distinction between one Pickney entity from another with each separate entity "gouging" the public on some level under the CCN granted only to TWS by the TRA: (in relevant part with emphasis underlined and clarification and context provided in italics)

Paragraph 2 of the Complaint:

"2. On Site Capacity Development Company is a Tennessee general partnership ("On Site"). On Site has common ownership with TWS, whose purpose is to develop and finance opportunities for TWS to provide wastewater treatment systems in Tennessee within areas for which it is an approved TRA service provider..."

Note that On Site does not possess a CCN but utilizes the CCN of TWS to "develop and finance opportunities for TWS to provide wastewater systems in Tennessee. TWS therefore avoids direct responsibility to the TRA for these duties which are inherent in TWS's own responsibilities to the public and TRA under the CCN.

Paragraph 13 of the Complaint:

"13 TWS and On Site work with a related entity, Pickney Brothers, Inc., a Tennessee corporation that is also a general contractor licensed with the State of Tennessee ("Pickney Bros."). Pickney Bros. has common ownership with TWS and On Site, and its purpose is to perform the general contracting work for wastewater treatment systems that are developed by On Site and operated by TWS."

Paragraph 16 of the Complaint:

"On Site and <u>TWS's intentions were</u>, as they had in other Williamson County, Tennessee wastewater projects, to use <u>Pickney Bros.</u>, Inc. its related entity that is a licensed general contractor, to do the actual construction work on the

System. The Contract provided for Powell Development to pay On Site and TWS (unlicensed contractors) a flat fee of \$550,000 (not Pickney Bros. Inc) during the course of construction.."

(Note that under these circumstances the unlawful construction contract becomes relevant to the TRA. Note also that the Complaint offers no explanation as to why On Site and TWS, unlicensed contracting entities and not Pickney Bros. entered a construction contract to build the wastewater plant Note also that the "common ownership" provides the benefits of TWS's CCN to other Pickney entities who are not under the direct jurisdiction and supervision of the TRA as contemplated by the legislature in creating the TRA)

As can be seen in the remainder of the Complaint, Charles Pickney alleges that On Site finances TWS by entering into a construction contract under the oral threat that TWS will not perform any duties under its CCN granted by TRA unless it completes the construction of the plant, charging in the case of my client, almost one million dollars. The Pickney entities complete the fraudulent scheme by demanding that the \$1,000,000.00 plant paid for by the Developer be turned over to TWS free and clear of any encumbrances amounting to a State empowered condemnation of the sewer plant for public use which is paid for and owned by the Developer, aggrandizing the Pickney entities not only the \$1,000,000.00 collected by On Site and TWS for construction of the sewer system, both unlicensed contractors, but another \$1,000,000.00 in value in demanding that the plant and real estate be transferred to TWS without compensation or payment of any kind by TWS thereby cumulating in a forfeiture of almost \$2,000,000 00 to the benefit of TWS and its related entities by common ownership and participation. This conduct is rendered even more egregious and unconscionable by the demand of TWS and On Site that the property owner put up all collateral from personal sources to enable TWS to bond its own performance in operation of a plant with TWS accepting virtually no financial responsibility for its CCN and in fact utilizing the State entitlement (CCN) to swindle the public in direct contradiction to its duties to service the public in a fair and responsible manner.

You will also note in Chancery Court complaint filed in Williamson County, part of the information. provided to your offices, that by the construction contract attached to the complaint, Tennessee Wastewater Systems, Inc. ("TWS) and On Site Capacity Development Company ("OCDC") were engaged in performing contracting services without a contractor's license in clear and unambiguous violation of Title 47 "Commercial Instruments and Transactions", Chapter 18 Consumer Protection Part 1 — Consumer Protection Act Of 1977, as amended by Chapter No. 492 of the Public Acts of 2004, Senate Bill No. 2244, an Act amending Tennessee Code Annotated, Title 47, Chapter 18 and Title 62, Chapter 6, relative to Consumer Protection for Violation for Misrepresentation of Unlicensed Contractors as Licensed Contractors, as neither TWS nor OCDC are licensed contractors. (see affidavits from State Contractors Licensing Board already provided) Making such conduct even more egregious and and investigation more compelling is the fact that TWS and OCDC have admitted in paragraph 33 of the complaint to ongoing unlawful activity in alleging that such conduct has and is being practiced throughout Williamson County.

TWS, OCDC and Charles Pickney solicited construction work from my client in relation to the construction of a sewer system representing themselves as duly licensed contractors capable of building, supervising, inspecting and otherwise performing the duties of licensed

contractors in the State of Tennessee. My client relied upon these representations, evidenced in part by the alleged contract attached to Plaintiffs' complaint (see Plaintiffs' Exhibit 1, hereinafter referred to as the "construction contract). My client further paid \$250,000.00 to OCDC for construction work pursuant to this alleged construction contract. (see the billing being attached to Plaintiffs' complaint Exhibit 2) and the complaint alleges that an additional \$550,000 00 is due from my client for work performed under the unlawful contract for work performed by TWS and OCDC, by direct allegation in the complaint. All evidence supports the position that the conduct of OCDC, TWS and Charles Pickney constituted the employment of unfair and deceptive acts and practices which are declared "unlawful" pursuant to TCA §47-18-109, and in violation of TCA §47-18-104(b), (as amended) to wit

"Representing that a person is a licensed contractor when such person has not been licensed as required by § 62-6-103 or § 62-37-104; or, acting in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ 62-6-102(3)(A), 62-6-102(5) or 62-37-103(5), and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed;"

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 6, Part 1:

- §62-6-136. (a) It is unlawful for any person, firm or corporation to represent itself as a licensed contractor, or to act in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ 62-6-102(3)(A), 62-6-102(5) or 62-37-103(5), and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed, unless such person, firm or corporation has been duly licensed under § 62-6-103 or § 62-37-104.
- (b) In addition to the penalties set out in §§ 62-6-120, 62-37-114 or 62-37-127, a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in Title 47, Chapter 18, Part 1, and as such the <u>private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.</u>
- (c) An individual who violates this section and would, but for the provisions of this section, have limited liability as owner of an entity having limited liability protection, including but not limited to a corporation, is personally liable for such individual's own representations, acts or omissions to the same extent as if that individual rendered such representations, acts or omissions as an individual.

SECTION 3.

(2) The action may be brought in a court of competent jurisdiction in the

county where the alleged unfair or deceptive act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

- (3) If the court finds that the use or employment of the unfair or deceptive act or practice was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper.
- (4) In determining whether treble damages should be awarded, the trial court may consider, among other things:
- (A) The competence of the consumer or other person;
- (B) The nature of the deception or coercion practiced upon the consumer or other person;
- (C) The damage to the consumer or other person: and
- (D) The good faith of the person found to have violated the provisions of this part.
- (b) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to § 47-18-107 or § 47-18-108.

The conduct of the unlicensed contractors is even more egregious since they used the State entitlement of a CCN, to operate a sewer plant, in order to coerce the payment pursuant to this unlawful construction contract by refusing to provide service as an operator unless payment was made upon the unlawful construction contract and the plant and real estate turned over to them without any consideration being paid by TWS to the owner of the property. Since my client owns the real estate and has been and is willing to pay any lawful amount due for the construction of the plant, the conduct of TWS, OCDC, Charles Pickney constitute another unfair and deceptive business practice in seeking the forfeiture of property without consideration in an attempted direct and/or indirect condemnation of my client's property without due process or just compensation This constitutes, together with the unlawful conduct complained of, unfair and deceptive business practices by TWS, OCDC, Charles Pickney and Pickney Brothers, Inc.. Pickney Brothers. Inc. becomes part of the unfair and deceptive business practice in that that entity, although licensed was never a party to any contract with the consumer involving construction, and is only inserted as a part of the process of unfair and deceptive business practices if and when TWS and OCDC are discovered to be unlicensed contractors, in an attempt to conspire to defeat the licensing requirements. (See Kyle v. Williams and Davis v Hobbs

below.) It is clear that TWS and OCDC were aware that a license was required to complete the construction contract as noted in their own complaint, that it was their intent for the work to be performed by a licensed contractor

TWS, OCDC, Charles Pickney and Pickney Brothers, Inc. have used contrivance, concealment, misrepresentation and delay as a tactic to coerce payment upon the unlawful construction contract in direct and uncontraverted violation of the Consumer Protection Act of 1977.

TWS, OCDC, Charles Pickney and Pickney Brothers, Inc. boldly and arrogantly represent that they have and intend to continue such unlawful conduct throughout Williamson County, in contracting as unlicensed contractors with the public having Pickney Brothers, Inc., a non party to the construction contract complete the work contracted for by TWS and OCDC, to wit "On-Site's and TWS's intentions were, as they had in other Williamson County, Tennessee wastewater projects, to use Pickney Bros, its related entity that is a licensed general contractor, to do the actual construction work on the System. The Contract provided for Powell Development to pay On-Site and TWS a flat fee of \$550,000 during the course of construction of the sand filtration and drip irrigation portions of he System, and additional fees of \$3,366 per Meadowbrook lot..." (see \$16 of Plaintiffs' complaint).'

As evidenced above, TWS, OCDC, Charles Pickney and Pickney Brothers, Inc. were fully aware that a licensed contractor was required to perform the construction work but TWS and OCDC knowingly and intentionally contracted as non-licensed contractors with my client and others throughout Williamson County, in fact it is believed throughout the state, representing by contract that TWS and OCDC were performing the construction work under contracts and demanding payment therefore and when caught assert contrary to their own contracts, that Pickney Brothers, Inc. did the work they demanded payment for, constituting a conspiracy to defeat the lawful conduct demanded by the Code sections cited herein.

It appears that certain agencies have elected to ignore such unlawful conduct precipitating note only Senate Bill Senate Bill No. 2244 but also the ruling of the Supreme Court in Kyle v. Williams and Danny L. Davis Con v. Hobbs the substance of which have already been provided to you in materials previously delivered. Note both cases cite violations of Tennessee law by unlicensed contractors of serious public concern and enforcement in the public interest. Note that the attempt to defeat the contracting statutes, made the subject of consumer protection under Senate Bill 2244 by inserting Pickney Brothers, Inc. after the fact was described by the Davis v. Hobbs court as a conspiracy to improperly defeat the licensing laws and a past and ongoing unfair and deceptive business practice.

This letter should not be considered a comprehensive recital of my clients position as many other facts are described not only in the materials previously provided to your office by my client but would be readily available upon the institution of a more formal investigation.

It is the hope of my client and this office that your office will open a formal investigation pursuant to CONSUMER PROTECTION ACT OF 1977, TCA §47-18-106 and seek all available remedies against TWS, OCDC, Charles Pickney and Pickney Brothers, Inc. for such conduct to include seeking an injunction against any future such conduct pending an outcome of the investigation in protection of the public at large as these unfair and deceptive business

practices involve the construction of "public facilities" and/or private facilities used to service public need. The recent rulings in *Kyle v. Williams (Supreme Court), Davis v. Hobbs* as well as Senate Bill # 2244 clearly evidence that the Courts as well as the legislature of Tennessee deem the matter of unlicensed contractors engaging in construction, to be of grave public concern.

You may anticipate the full and complete cooperation of my client as well as this office in your formal investigation. I look forward to discussing matters with you further on Monday.

It is obvious from the above facts that the Pickney entities have abused and continue to abuse the public and State trust under which the TRA empowered TWS by virtue of a CCN granted creating the Pickney entities. These Pickney entities act in concert to extort and gouge the public, defeat State laws, all in the interest of greed while at the same time secreting income to defeat utility taxing laws.

It is imperative that each agency cooperate and communicate with one another to free the public from the multi-agency conspiracy threatening the public by the Pickeny entities. It is the belief of this firm that this can be accomplished only under the supervision and guidance of the Attorney General's Office charged with the responsibility and duty to supervise and oversee such agencies. As the Pickney misconduct spreads throughout Tennessee, a proper beginning to such process would be the intervention of the Attorney General's office into all matters under which each of its divisions have jurisdiction as it is as important for the Attorney Generals Office's independent divisions to cooperate as it is other State agencies if the Pickneys are to be stopped, unlawful conduct prevented and the public protected from further harm. Please consider this letter and all information provided previously by my client and this office as support for our request for the institution of a formal investigation and appropriate action.

Very truly yours,

MILITANA* & MILITANA

RICHARD MILITANA, ESQUIRE

RM/DKM

PRODUCTION REQUEST #6



FAX

To:	John 1	Powell	Fro	m:	Keith Townsend	
Fax: 370-3095		-3095	Pa	jes	(incl. cover): 6	
Phon	94		Daf	e :	28 MAY 2003	
Re:	DDF	R agreement/contract	СС	:		·····
□ Ur	gent	☐ For Review	☐ Please Comme	nt	☐ Please Reply	☐ Please Recycle
9 Coi	mment	'S:				

Following are two documents for your consideration. The first document (2 pages) is a professional services agreement for PBI to proceed with the DDR. One half of the fee will be required prior to commencing the DDR.

The second document (pages 4, 5, and 6) is a typical contract for subdivision in Williamson County. You do not need to sign the contract for subdivision at this time. Bob Pickney asked that I send you something so that you would have an idea when the time comes.

If you have any questions, please cal me at this office.

Keith Townsend

John.

On-site Capacity Development Company

PROFESSIONAL SERVICES AGREEMENT

This agreement is made as of May 28, 2003, between <u>Arrington Meadows, LLC.(Client)</u> and On-site Capacity Development Company (OCDC) to perform professional services for the assignment described as follows:

Project: John Powell Property - Arrington Meadows Subdivision

Location: Williamson County, TN

Description of Project: Design Development Report (DDR) and Detailed Soils Investigation Report (DSIR) for residential subdivision in Williamson County, TN.

- PROFESSIONAL SERVICES: OCDC agrees to perform the following Basic Services under this contract;
 - A. Design Development Report for Williamson County Planning Commission
 - B. Detailed Soils Investigation Report for Williamson County Planning Commission

II.	COMPENSATION: The compensation to be paid to OCDC for providing the requested services shall be:				
	Cost Plus in accordance with the rate schedule attached as Exhibit "A" including applicable reimbursables.				
	Estimated Fee or Maximum Fee				
	X Lump Sum \$30,000.00 (DDR and DSIR)				
	Percentage of Construction Cost % Estimated Fee				
	X Other (specify) Williamson County review fee - \$1500.00				

III. PAYMENTS: Payments for services rendered will be made as follows: 50% of fee prior to commencing the investigations and the remaining 50% when reports are approved by the Williamson County Planning Commission. Final payment is due within ten (10) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1 1/2% per month will be added to unpaid.

balances more than thirty (30) days old.

- · County review fee to be paid before County Engineer will review the reports.
- IV. TERMINATION: The obligation to provide further services under this Agreement may be terminated without cause by either party upon ten (10) days written notice. On termination by either Client or OCDC, Client shall pay OCDC with respect to any service performed to the date of termination (including all reimbursable expenses incurred).
- V. REUSE OF DOCUMENTS: All documents including Drawings and Specifications prepared by OCDC pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Client, or others, on extensions of the Project or on any other project. Any reuse without written verification or adaptation by OCDC for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to OCDC; and client shall indemnify and hold harmless OCDC from all claims, damages, losses and expenses

Jun 10 03 01:14p

including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle OCDC to further compensation at rates to be agreed upon by Client and OCDC.

- VI. ACCESS TO THE SITE/JOBSITE SAFETY: Unless otherwise stated, OCDC will have access to the site for activities necessary for the performance of the services. The Client understands that OCDC is not responsible, in any way, for the means, methods, sequence, procedures, techniques, scheduling of construction, or job site safety, OCDC will not be responsible for any losses or injuries that occur at the Project site.
- VII. INDEMNIFICATIONS: If any claim is brought against either the Client or OCDC by any third party, relating in whole or in part to the negligence of the Client or OCDC, each party shall indemnify the other against any loss or judgment, including attorneys' fees and cost, to the extent that such loss or expense is caused by the party's negligence.
- VIII. RISK ALLOCATION: In recognition of the relative risks, rewards and benefits of the project to both the Client and OCDC, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, OCDC's total liability to the Client for any and all injuries, claims, losses. expenses, damages, or claim expenses arising out of this agreement from cause or causes, shall not exceed the amount of our fee. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.
- IX. DISPUTES RESOLUTION: It is agreed by both parties that all unsettled claims, counterclaims, discutes or other matters in question arising out of or related to this Agreement shall first be attempted to be resolved by mediation. This provision can be waived by the mutual consent of the parties, or by either party if its rights would by irrevocably prejudiced by a delay in initiating arbitration or the right to file a lawsuit.
- X. OPINIONS OF CONSTRUCTION COST: Any opinion of probable construction cost prepared by OCDC represents OCDC's judgment as design professionals and is supplied for general guidance of the Client. Since OCDC has no control over the construction marketplace, OCDC does not quarantee the accuracy of such opinions as compared to contractor bids or actual cost to Client.
- XI. GOVERNING LAW: Unless otherwise specified within the Agreement, this Agreement shall be governed by the Law of the State of Tennessee.

Title:

Address

On-site Capacity Development Company

Address: 7638 River Road Pike

Nashville, Tennessee 37209



SEWER CONTRACT FOR SUBDIVISION

This AGREEMENT made and entered into this^d day of	2003, by and
between Onsite Systems, Inc., hereinafter referred to as "Utility", Onsite	Capacity
Development Company hereinafter referred to as "Contractor", and	
, hereinafter referred to as "Developer".	The purpose of
this contract is to set forth the responsibilities of each party for the desig	•
and operation of the sewerage collection, treatment and disposal system	for the John
Powell Property.	

WITNESSETH

For and in consideration of the construction costs hereinafter mentioned and the mutual promises of the parties hereinafter contained, particularly that contractor will be responsible for design and construction of collection, treatment and disposal system; the Utility will in the future be responsible for repair, maintenance and replacement of said sewers herein provided for, and to maintain the total system; the developer to pay for DDR and tap fees as specified herein, and other good and valuable considerations, the receipt of all which is acknowledged, the parties hereto have entered into the following agreement:

The Contractor is to install said treatment and disposal system, etc. in accordance with drawings, plans, and specification as shown on the plat of subdivision which is attached hereto, and the plans and specification as approved by the Utility's engineers, the State of Tennessee and the Williamson County Planning Commission which said plans and specifications are attached hereto and made a part of this contract. The developer will be responsible for installation of all fencing required. The developer will determine the style and type of fence. The Planning Commission, Tennessee Department of Environment (TDEC) and the Utility must approve of the fence selected.

The Developer is to perform all of the necessary work for the installation of said sewer collection system, completely install the same at no cost whatsoever to the Utility, all in accordance with plans and specifications hereinabove referred to, and for that purpose has entered into a contract for completion of this work.

All construction begun, continued and completed hereunder shall be subject to the supervision and approval of the Utility's engineers and representatives who shall have a continuous right of inspection throughout the progress of the work. No pipe, fittings, or connection shall be covered until inspected and approved by the Utility. It is specifically understood and agreed that all installation costs, for said installation of the sewer collection system main lines, filter system and drip irrigation system will be paid for by the Developer. The homebuilder will pay for the cost of installing the tanks, pumps and associated equipment at each house.



In the event of a change in the drawings or plat of the subdivision by agreement of the parties, prior to the actual installation of the facilities provided for in the plans and specifications, then such change shall be deemed incorporated in this contract, as though set out verbatim herein, and a copy of said changed plans shall be attached to this contract and made a part hereof. It is further understood that such changed plans, if any, may be looked to for a total description of the properties conveyed to the Utility by the Developer, and that all changes to the approved construction plans are subject to additional fees, as well as approval by the Planning Commission and the State of Tennessee.

The Developer further agrees:

That the Developer will immediately repair at its own cost and expenses all breaks, leaks or defects of any type-whatsoever arising from any cause whatsoever occurring within one (1) year from the date said lines, mains, valves, fittings, etc. which are constructed by Developer.

That Developer will pay a \$6000 per lot tap fee if all taps are paid for at initial contract signing. If Developer phases development of lots, tap fees for remaining lots will be increased at a rate of 0.5% per month after the contract is signed. One half of tap fees will be due when contract is signed. The other half will be due within ten days of when the State of Tennessee approves construction of the treatment and disposal system. The minimum tap fees for initial contract shall be 50% of total development. The remaining lots may be phased in any number after initial phase.

That after system is placed into operation, all platted lots without occupied dwelling (i.e. not online) as of Dec. 1, will be assessed an \$84 per year sewer access fee. Fee will be payable each year on December 15th to utility by the owner of record as of Dec. 1. Developer shall notify buyer of sewer access fee before closing. Developer will be responsible for all access fees for lots where buyer was not notified, in writing, of the access fee.

That the Developer as a part of the construction contract shall install Service connections for all service sewers to the property line of each lot in said subdivision. The homebuilder at their expense will pay contractor the contract price for installation of watertight tanks and service connection lines, or may contract independently with other certified installers. The installed cost of the watertight tank and service line by contractor are as follows:

Install 1500 Gallon Tank, Filter & Riser (gravity)	\$1850.00 EA
Install 1500 Gallon Tank, Pump with vault, telemetry	
control panel, and riser	\$4000.00 EA
Install service line from house to tank to service	
Connection	\$3.50 LF
If Rock has to be removed by mechanical methods	\$1200.00 EA
Unit prices will increase 6% per year, generally around Jan. 1	of that year.



Upon the completion of the installations contracted for herein, the Developer hereby represents and warrants that all subcontractors, material suppliers, workmen and any debts associated with this project has been paid for in full and that no liens or encumbrances shall remain for the installation of said work.

By the execution of this agreement, the Developer hereby represents and warrants that said sewerage system will be installed in accordance with the foregoing provisions and the plans and specifications, and that written easements will be provided five feet (5') in width on each side of the center line of all sewers installed hereunder other than sewers along the public right-of-way.

It is agreed that the Utility shall have exclusive title and ownership of land designated for construction of sand filter and drip irrigation. The Developer shall transfer ownership of the actual treatment and disposal system and property by warranty deed to Utility when the Phase I plat is signed.

Payment:

Developer agrees to make the following payments:

Tap Fees - \$6000 per lot; 50% at signing of Contract - 50% When Construction Complete (Minimum 50% of total construction due at signing)

Payments not made when due will accrue interest at 1.5% per month of unpaid balance until paid in full.

IN WITNESS WHEROF, the parties hereto have entered into this agreement as of the day and date first above written.

Ву:	Ву:	···
President Onsite Systems, Inc.	Developer	
Ву:		
Partner		
Onsite Capacity Development Company		

NICK ROMER DEAPT After MEETING with Bob PICKNEY
THIS CONTRACT WAS SENT TO RICKARD Military
TWS NEVER SAW THIS DOCUMENT.

(FIRST WORKING DRAFT 4/13/04—UNCERTAIN LANGUAGE IS IN ITALICS)

WASTEWATER TREATMENT FACILITY SERVICE AGREEMENT

RECITALS

THE PARTIES

The parties (Parties) to this Wastewater Treatment Facility Service Agreement ("Agreement") are:

Tennessee Wastewater Systems, Inc., ("TWS") a Tennessee corporation authorized by the State of Tennessee to operate as a public utility. TWS designs, develops, and operates wastewater treatment facilities and systems. Its Tennessee office is located at 7638 River Road Pike, Nashville, TN 37209, and

ABC, LLC, ("XXX") a Tennessee limited liability company that facilitates the acquisition of real and personal property to be used in the process of treating sewage and wastewater, provides the physical structures and systems necessary for sewagee and wastewater customers to connect to and utilize sewage and wastewater treatment facilities. The primary office of XXX is located at 1413 Plymouth Drive, Brentwood, Tennessee 37027.

THE PERSONAL AND REAL PROPERTY CONTEMPLATED IN THIS AGREEMENT

The personal and real property to which this Agreement refers are a wastewater treatment facility (Facility) comprised of a treatment plant and two appurtenant wastewater collection soil fields. The Facility together with its integrated structures and systems accomplishes the sanitary treatment of sewage and other water-borne waste products.

The Facility is generally located on property conveyed by a warranty deed from its former owner, Arrington Meadows, LLC, to TWS. The Facility is legally described in a warranty deed contained in "Attachment A" to this Agreement, as an actual incorporation to this Agreement. The warranty deed contains restrictive covenants causing title to the Facility to revert to Arrington Meadows, LLC if the Facility no longer functions as a sewage and wastewater treatment facility.

THE PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to establish the rights and obligations of and between TWS and XXX respecting the Facility. TWS will operate the Facility conducting sanitation treatment of customer sewage and wastewater and will charge the customer a fee for the service. XXX will, at its discretion, arrange for and connect customers to the Facility, and will charge customers a fee for XXX services.

This Agreement does not establish a partnership, joint venture, association or other business relationship between the Parties. The Parties will not act in concert to share with each other profits or expenses, but instead are separate legal entities independent conducting separate and distinct profit-seeking activities.

NOW THEREFORE, in exchange for their mutual promises and covenants herein described, the Parties agree TO WIT,

1. <u>TWS WILL OWN AND OPERATE THE FACILITY</u>. TWS will own the Facility after conveyance of the Facility to TWS by warranty deed granted by Arrington Meadows, LLC. TWS will operate the Facility for the sole purpose of treating water-borne waste products presented to the Facility for treatment.

2. <u>FACILITY OWNERSHIP AND OPERATING REQUIREMENTS AND PROHIBITIONS.</u>

- 2.1. TWS will operate the Facility consistent with the regulations, dictates and demands of governing Tennessee regulatory authority, and will do so continuously except when prevented from doing so by catastrophic events beyond TWS control. In the event of a suspension of services provided by TWS, notwithstanding cause therefore, TWS will incur all expenses and financial burden necessary to expeditiously return the Facility to fully functioning status.
- 2.2. TWS will accept for sewer and wastewater treatment at the Facility any and all customers having written approval from XXX for sewer and wastewater treatment at the Facility. TWS will not accept for sewer and wastewater treatment at the Facility any sewer and wastewater customer not having written approval from XXX for treatment at the Facility.
- 2.3. TWS will maintain the Facility in a manner that does not impede or otherwise interfere with the quiet enjoyment of property proximate to the Facility.
- 2.4. TWS will control the growth of undergrowth, shrubs, and grasses contained on the Facility with periodic mowing.
- 2.5. TWS will not pledge, mortgage, leverage, assign, or otherwise encumber in any way its rights or interest in the Facility.

2.6. TWS will make available to XXX or its assigns unlimited amounts of available post-treatment water.

2.7.

- 3. <u>FEES FOR CUSTOMER SEWAGE AND WASTEWATER TREATMENT</u>. TWS acknowledges that by this Agreement, and with respect to operating the Facility, TWS revenues will be limited to earning and collecting service fees from TWS customers who present their sewage and wastewater to the Facility for treatment.
- 4. <u>IMPROVEMENTS AND PHYSICAL PROPERTIES CONNECTING CUSTOMERS</u>
 <u>TO THE FACILITY</u>. XXX will construct *and maintain* the improvements and physical properties connecting customer structures with the Facility for the purpose of conveying sewage and wastewater from the customer to the Facility. XXX will incur and bear the entire cost of constructing *and maintaining* said customer-Facility-connecting improvements and physical properties.
- 5. TREATMENT ACCESS FEES. XXX will have the exclusive right to collect access fees from customers who, at the sufferance of XXX, connect their residence or business structures to the Facility for treatment of sewer and wastewater generated by the customer. The access fee will serve to reimburse and remunerate XXX for direct and indirect costs incurred to initially connect the customer's structure to the Facility. XXX is not obligated to accept potential customers TWS may recommend to be served by the Facility.
- 6. NO LIMITATIONS ON XXX CONSTRUCTING ADDITIONAL TREATMENT FACILITIES. This Agreement does not prevent XXX from establishing treatment facilities in addition to the Facility contemplated in this Agreement, nor is XXX prevented from utilizing service providers other than TWS to operate a facility not contemplated in this Agreement.
- 7. NO ASSIGNMENT BY TWS OF THIS AGREEMENT. TWS will not assign or otherwise convey its rights and obligations under this Agreement, except as permitted by Tennessee regulatory authority and XXX. If under Tennessee regulatory authority a conveyance of TWS Agreement obligations were permitted, such shall be conducted in a manner that would not result in an interruption of service and obligations contemplated in this Agreement.
- 8. <u>PERFORMANCE BOND COSTS</u>. XXX will be responsible for securing and bearing the cost of performance bonds required by Williamson County. TWS will reimburse XXX for the cost of performance bonds attributable to customers whose sewage and wastewater are treated by the Facility. The performance bond reimbursement due XXX from TWS will be paid monthly and within 30 days after TWS receives from customers the sewage and wastewater treatment fees contemplated in this Agreement. The amount

of the performance bond reimbursement due XXX will be determined by dividing onetwelfth (1/12) of the total annual cost of applicable performance bond(s) by the number of customers connected to the Facility

- 9. <u>INDEMNIFICATION AGAINST PERFORMANCE FAILURE</u>. In the event XXX incurs assessments or other costs resulting from XXX posting performance bonds, TWS will indemnify and pay XXX for 100% of any disbursements made or required to be made by the performance bonds, to a limit of one million U.S. dollars (\$1,000,000.00). Said payments will be made within ninety (90) days of each and every assessment or cost incurred.
- (The following clause will likely not be part of this agreement since it is not XXX that is purchasing and paying for the Facility, nor does XXX own the land upon which the Facility is built. The obligation to pay for the construction of the Facility perhaps lies with Arrington Meadows, LLC.)
- 10. PAYMENT FOR THE COST OF BUILDING THE FACILITY. XXX shall bear the entire cost of constructing the Facility. To the degree TWS constructed the Facility, TWS is owed nine hundred eighty thousand U.S. dollars (\$980,000.00). Payment of the \$980,000.00 obligation shall be made with a current payment of five hundred fifty thousand U.S. dollars (\$550,000.00), leaving a balance of four hundred thirty thousand (\$430,000.00) to be amortized over time and ratably as residential property land lots are sold. Interest charges will not be applied to the unamortized Facility construction cost balance. Since there are eighty-seven (87) residential land lots planned to be sold, the selling of each lot would liquidate four thousand nine hundred forty two U.S. dollars and fifty-three cents (\$4942.53) of the \$430,000.00 obligation. From the proceeds received upon the sale of each residential land lot, TWS will be paid within thirty (30) days \$4942.53 toward amortizing the Facility construction cost TWS is due until the entire \$430,000.00 balance is fully paid.
- 11. TERM. The temporal duration of this Agreement is unlimited.
- 12. <u>AGREEMENT TERMINATION</u>. Because this agreement regards sanitation services necessary for public health, it may be terminated only in the event of material breach by either Party, and may not be terminated at the election of the breaching Party.
- 13. <u>REMEDIES IN THE EVENT OF BREACH</u>. Liquidated damages or specific remedies for breach of this Agreement are not contemplated in this Agreement. Remedies available at law will determine the outcome of any Agreement contest.
- 14. <u>WAIVER</u>. If either Party allows the other Party aberrations from this Agreement, such shall not operate or be construed to relieve any Party from adhering to this Agreement.
- 15. <u>INFORMATION EXCHANGE</u>. The Parties agree to exchange information necessary to confirm and effect compliance with this Agreement, including but not limited to, TWS

customer service fee collection from which performance bond reimbursement inures to XXX.

- 16. <u>NOTICE</u>. Notice shall be served on the Parties at their addresses as they appear in this Agreement, or at the primary business location of a Party if different.
- 17. <u>ENTIRE AGREEMENT</u>. This Agreement is the entire agreement between the Parties respecting the Facility, and no alteration, modification, or interpretation hereof shall be binding on the Parties unless made in writing and executed by both Parties.
- 18. <u>APPLICABLE LAW</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee.
- 19. <u>CONFIDENTIALITY</u>. The Parties agree to not disclose to persons or entities, except on a need-to-know basis, any information contained in this Agreement.
- 20. <u>SEVERABILITY</u>. If any passage, provision, or language contained in this Agreement is inconsistent with or offensive to governing law, the offending element shall be deemed inoperative, with the spirit and effect of the Agreement remaining intact to the extent possible.

IN WITNESS WHEREOF, the Parties day of	s hereto have executed this Agreement this, 2004.
Tennessee Wastewater Systems, Inc.	
(A Tennessee Corporation)	
Ву:	
Robert Pickney, President	
&	
XXX, LLC	
(A Tennessee Limited Liability Company)	
By:	

John E. Powell, Member

ATTACHMENT A

(A copy of the warranty deed will be attached and marked as "Attachment A.")

Main Identity

From:

<charlespickney@tennesseewastewater com>

To: Sent: <trailer_lease_inc@comcast net> Tuesday, June 01, 2004 4 11 PM Blackhawk-Powell 5-31-04 doc

Attach: Subject:

Blackhawk contract

John

This is the Blackhawk Contract. It has not been reviewed by our attorney. Please look it over and let us know of any needed changes. I will be out of town for the rest of the week. Please let brother Bill or Bob know if you need anything.

Charles

Charles Fickney &-Mailed this contract to me on June 1st 2004

AGREEMENT TO SERVE BLACKHAWK SUBDIVISION WITH SEWER SERVICE

RECITALS

THE PARTIES

The parties (Parties) to this Agreement to serve Blackhawk Subdivision ("Agreement") are:

Tennessee Wastewater Systems, Inc., ("TWS") a Tennessee Corporation authorized by the State of Tennessee to operate as a public utility. Its office is located at 7638 River Road Pike, Nashville, TN 37209, and

J. Powell Development LLC, (POWELL), a Tennessee limited liability company, located at 1413 Plymouth Drive, Brentwood, TN 37027, and

On-Site Capacity Development Company, (OCDC), a Tennessee Partnership located at 7638 River Road Pike, Nashville, TN 37209

A separate contract will be agreed to between Owners of Black Hawk Subdivision (hereinafter – **Blackhawk**) and TWS covering rules and regulations of TWS and transfer of easements and real estate issues concerning any and all work on **Blackhawk** site. Contract will also include a \$300 per lot inspection fee for inspection of lines, septic tanks and all work on Blackhawk property.

THE PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to set terms and conditions under which **Blackhawk** Subdivision will be provided wastewater services..

This Agreement does not establish a partnership, joint venture, association or other business relationship between the Parties. The Parties will not act in concert to share with each other profits or expenses, but instead are separate legal entities independently conducting separate and distinct profit-seeking activities.

NOW THEREFORE, in exchange for their mutual promises and covenants herein described, the Parties agree **TO WIT**,

- 1. TWS WILL OWN AND OPERATE THE FACILITY. TWS will own the Facility after conveyance of the Facility to TWS by warranty deed by Arrington Meadows, LLC. Facility must be conveyed before Blackhawk plat is signed by TWS.
- 2. <u>BLACKHAWK</u>. TWS and POWELL mutually agree to allow Blackhawk to be connected to existing treatment facility for Meadowbrook Subdivision (currently known as Kings Chapel). Blackhawk subdivision is limited to a maximum 51 lots.
- 3. TREATMENT ACCESS FEES. OCDC will be paid \$600 per lot before final plat is signed.
- 4. Powell agrees to be responsible for all bonding required as part of Blackhawk. All revenue received from bonding payment from customers will be paid to Powell.
- 5. Powell agrees to pay \$4000 per lot for all lots platted in Blackhawk until \$935,250 has been paid to OCDC for the 215 lots tap capacity as part of original agreement.
- 6. Other Cost. Powell will pay for all cost for DDR, engineering, laying of lines, and any cost necessary to extend sewer to Blackhawk. DDR cost will be \$15,000. Engineering will be \$300 per lot as lots are platted.
- 7. TREATMENT CAPACITY. TWS and Powell acknowledge that POWELL contracted for 215 lots capacity by previous agreement. Powell may use the lot tap capacity for either Meadowbrook (Kings Chapel) or Blackhawk. Any additional tap capacity will be bought from OCDC when needed.
- 8. <u>WAIVER</u>. If any Party allows other aberrations from this Agreement, such shall not operate or be construed to relieve any Party from strict adherence to this Agreement in the future.
- 9. <u>NOTICE</u>. Notice shall be served on the Parties at their addresses as they appear in this Agreement, or at the primary business location of a Party if different.
- 10. ENTIRE AGREEMENT. This Agreement is the entire agreement between the Parties respecting the Facility, and no alteration, modification, or interpretation hereof shall be binding on the Parties unless made in writing and executed by all Parties.
- 11. <u>APPLICABLE LAW</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee.
- 12. <u>CONFIDENTIALITY</u>. The Parties agree to not disclose to persons or entities, except on a need-to-know basis, any information contained in this Agreement.
- 13. <u>SEVERABILITY</u>. If any passage, provision, or language contained in this Agreement is inconsistent with or offensive to governing law, the offending element shall be deemed inoperative, with the spirit and effect of the Agreement remaining intact to the extent possible.
- 14. <u>INTERPRETATION</u>. This Agreement has been submitted to the scrutiny of all parties and shall be given a fair and reasonable interpretation without

consideration being given to its having been drafted by any party or such party's counsel.

IN WITNESS WHEREOF, the Part	ies hereto have executed this Agreement this 2004.
any or	,,
Tennessee Wastewater Systems, Inc.	On-Site Capacity Development Company
(A Tennessee Corporation)	(A Tennessee Partnership)
By:	By:
Charles Pickney, Jr., President	By: William Pickney, Partner
J. Powell Development, LLC	
(A Tennessee Limited Liability Company)	
By:	
John F. Powell Member	

THIS WAS E-MAILED FROM Richard MilitANA ON MAY 26 OF AND I RESENT TO Robert Pickney by E-MAIL

WASTEWATER TREATMENT FACILITY SERVICE AGREEMENT

RECITALS

THE PARTIES

The parties (Parties) to this Wastewater Treatment Facility Service Agreement ("Agreement") are:

Tennessee Wastewater Systems, Inc., ("TWS") a Tennessee corporation authorized by the State of Tennessee to operate as a public utility. TWS designs, develops, and operates wastewater treatment facilities and systems. Its Tennessee office is located at 7638 River Road Pike, Nashville, TN 37209, and

Kings Chapel Capacity, LLC, ("KCC") a Tennessee limited liability company that facilitates the acquisition of real and personal property to be used in the process of treating sewage and wastewater, provides the physical structures and systems necessary for sewage and wastewater customers to connect to and utilize sewage and wastewater treatment facilities. The primary office of KCC is located at 1413 Plymouth Drive, Brentwood, Tennessee 37027.

THE PERSONAL AND REAL PROPERTY CONTEMPLATED IN THIS AGREEMENT

The personal and real property to which this Agreement refers are a wastewater treatment facility (Facility) comprised of a wastewater treatment plant and several other soil fields now or that may be added in the future to increase capacity of facility as may be requested by KCC and this operating agreement. The Facility together with its integrated structures, soil fields, agreements and systems accomplishes the sanitary treatment of sewage and other water-borne waste products with customers specified by KCC.

The Facility is generally located on property conveyed by a restricted and conditional warranty deed from its former owner, Arrington Meadows, LLC, to TWS. The Facility is legally described in a warranty deed contained in "Attachment A" to this Agreement as may be added to and/or augmented in the future, as an actual an/or potential incorporation to this Agreement all of which shall contain a right of reversion or ownership right to KCC in the event of default by TWS. Both this Agreement and

1

warranty deed contains restrictive covenants causing title to the Facility and operational rights to revert to Arrington Meadows, LLC, or assigns, if the Facility no longer functions as a sewage and wastewater treatment facility or TWS is in material breach of this Agreement.

THE PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to establish the rights and obligations of and between TWS and KCC respecting the Facility. TWS will operate the Facility, in conformance with all laws, rules, regulations, ordinances etc. as well as this Agreement, conducting sanitation treatment of customer sewage and wastewater and will charge the customer a fee for the service and be responsible for all billings and collections. KCC will, at its sole discretion, arrange for and connect customers to the Facility, and will charge customers a fee for KCC services.

This Agreement does not establish a partnership, joint venture, association or other business relationship between the Parties. The Parties will not act in concert to share with each other profits or expenses, but instead are separate legal entities independently conducting separate and distinct profit-seeking activities.

NOW THEREFORE, in exchange for their mutual promises and covenants herein described, the Parties agree TO WIT,

1. TWS WILL OWN AND OPERATE THE FACILITY. TWS will own the Facility after conveyance of the Facility to TWS by conditional warranty deed (with reversion) granted by Arrington Meadows, LLC and such additional conditional deeds as may occur at the direction of and with conditions imposed by KCC. TWS will operate the Facility for the sole purpose of treating water-borne waste products presented to the Facility for treatment by or through KCC.

2. <u>FACILITY OWNERSHIP AND OPERATING REQUIREMENTS AND PROHIBITIONS.</u>

- 2.1. TWS will operate the Facility consistent with the regulations, dictates and demands of governing Tennessee regulatory authorities and obligations under this Agreement, and will do so continuously except when prevented from doing so by catastrophic events beyond TWS control. In the event of a suspension of services provided by TWS, notwithstanding cause therefore, TWS will incur all expenses and financial burden necessary to expeditiously return the Facility to fully functioning status.
- 2.2. TWS will accept for sewer and wastewater treatment at the Facility any and all customers having written approval from KCC for sewer and wastewater treatment at the Facility. TWS will not accept for sewer and wastewater treatment at the Facility any

sewer and wastewater customer not having written approval from KCC for treatment at the Facility.

- 2.3. TWS will maintain the Facility and surrounding areas wherein the Facility utilizes property in a manner that does not impede or otherwise interfere with the quiet enjoyment of property proximate to the Facility.
- 2.4. TWS will maintain the growth or undergrowth including, without limitation, shrubs and grasses upon property which the Facility utilizes in a manner consistent with the maintenance of other grounds within the development or business property.
- 2.5. TWS will not pledge, mortgage, leverage, assign, or otherwise encumber in any way its rights or interest in the Facility.
- 2.6. TWS will make available to KCC or its assigns unlimited amounts of available post-treatment water.
- 3. FEES FOR CUSTOMER SEWAGE AND WASTEWATER TREATMENT. TWS acknowledges that by this Agreement, and with respect to operating the Facility, TWS revenues will be limited to earning and collecting reasonable service fees from TWS customers who present their sewage and wastewater to the Facility for treatment. All other fees, expenses etc, billed by TWS, shall be and remain the exclusive property of KCC subject to any escrow obligations imposed by law.
- 4. IMPROVEMENTS AND PHYSICAL PROPERTIES CONNECTING CUSTOMERS TO THE FACILITY. KCC will construct the improvements connecting customer structures with the Facility for the purpose of conveying sewage and/or wastewater from the customers to the Facility from all private roads and private/or community property. TWS will construct and maintain improvements and physical properties connecting customer structures with the Facility for the purpose of conveying sewage and/or wastewater from the customer to the Facility from, along and across all state, county and federal highways and roads as well as all public areas and public property. TWS will incur and bear the entire cost of constructing and maintaining said customer-Facilityconnecting improvements and physical properties requested by KCC from, along and across all aforementioned state, county and federal highways and roads and public areas property to all customer—Facility -connections improvements and physical properties completed by KCC, unless other agreed to in writing by KCC. TWS agrees to abide by all state, county and federal regulations in the performance of its duties and obligations herein. Notwithstanding the foregoing and not by way of limitation, TWS agrees to provide KCC with an engineering plan reflecting where all related sewerage/waste water lines are or should be placed within any user property as well as showing the proper location of collection waste receptacles on each lot and/or user property.
- 5. <u>TREATMENT ACCESS FEES</u>. KCC will have the exclusive right to collect access fees from customers who, at the sufferance of KCC, connect their residence or business structures to the Facility for treatment of sewer and wastewater generated by the

customer. The access fee will serve to reimburse and remunerate KCC for direct and indirect costs incurred to initially connect the customer's structure to the Facility. KCC is not obligated to accept potential customers TWS may recommend to be served by the Facility, however TWS must accept all potential customers KCC may recommend subject only to capacity to accept same.

- 6. NO LIMITATIONS ON KCC CONSTRUCTING ADDITIONAL TREATMENT FACILITIES. This Agreement does not prevent KCC from establishing treatment facilities in addition to the Facility contemplated in this Agreement, nor is KCC prevented from utilizing service providers other than TWS to operate a facility not contemplated in this Agreement.
- 7. NO ASSIGNMENT BY TWS OF THIS AGREEMENT. TWS will not assign or otherwise convey its rights and obligations under this Agreement, except as required by Tennessee regulatory authority and/or mandated by this Agreement. If under Tennessee regulatory authority a conveyance of TWS Agreement obligations were required, such shall be conducted in a manner that would not result in an interruption of service and obligations contemplated in this Agreement.
- 8. <u>PERFORMANCE BOND COSTS</u>. KCC will be responsible for securing and bearing the cost of all bonds required by Williamson County. TWS will reimburse KCC for the cost of said bonds attributable to customers whose sewage and wastewater are treated by the Facility. The reimbursement for such bonds to KCC from TWS will be paid upon collection of money for bonds invoices by TWS in sewer billings in a monthly amount of ______ or upon any other schedule mutually agreed upon in writing.
- 9. <u>INDEMNIFICATION AGAINST PERFORMANCE FAILURE</u>. In the event KCC incurs assessments or other costs resulting from KCC posting performance bonds, TWS will indemnify and pay KCC for 100% of any disbursements made or required to be made by the performance bonds, to a limit of one million U.S. dollars (\$1,000,000.00). Said payments will be made within ninety (90) days of each and every assessment or cost incurred.
- 10. PAYMENT FOR THE COST OF BUILDING THE FACILITY. KCC shall bear the responsibility of securing payment for the entire cost of constructing the Facility by an entity other than TWS and shall be entitled to all rights thereon to include without limitation, depreciation rights. To the degree TWS constructed the Facility, TWS is owed nine hundred eighty thousand U.S. dollars (\$935,000.00). Payment of the \$935,000.00 obligation shall be made with a current payment of five hundred fifty thousand U.S. dollars (\$565,000.00), leaving a balance of four hundred thirty thousand (\$370,000.00) to be amortized over time and ratably as residential property land lots are sold. Interest charges will not be applied to the unamortized Facility construction cost balance. Since there are eighty-seven (87) residential land lots planned to be sold, the selling of each lot would liquidate four thousand nine hundred forty two U.S. dollars and fifty-three cents (\$4,252.87) of the \$370,000.00 obligation. From the proceeds received upon the sale of each residential land lot, TWS will be paid within thirty (30) days \$4,252.87 toward

amortizing the Facility construction cost TWS is due until the entire \$370,000.00 balance is fully paid.

- 11. <u>TERM</u>. The temporal duration of this Agreement is unlimited, subject to applicable laws and the right of reversion contained herein.
- 12. <u>AGREEMENT TERMINATION</u>. Because this agreement regards sanitation services necessary for public health, it may be terminated in the event of material breach by TWS, and may not be terminated at the election of TWS.
- 13. REMEDIES IN THE EVENT OF BREACH. In view of the practical impossibility of determining by computation or legal proof the exact amount of damages resulting to KCC from a violation of the provisions of this Agreement by TWS, Five Hundred Thousand Dollars (\$500,000.00) is agreed upon as the liquidated damages for any breach of this Agreement by TWS, which TWS agrees to pay on demand upon affidavit of KCC stating that a breach of TWS has occurred. KCC shall have the right to set off that amount against any amount due or to become due to TWS from KCC. It is mutually understood that the fixing of the amount as liquidated damages shall not be construed as a release or waiver by KCC of any right to proceed in equity or otherwise to compel the fulfillment or prevent a violation by TWS of any of the provisions of this Agreement to include, without limitation TWS's obligation to assign the rights to operate the facility to KCC or assigns upon demand by KCC in the event of default by TWS. TWS acknowledges that a breach of the provisions herein by TWS will cause irreparable damages to KCC and TWS consents to injunctive relief if sought by KCC.
- 14. <u>WAIVER</u>. If either Party allows the other Party aberrations from this Agreement, such shall not operate or be construed to relieve any Party from strict adherence to this Agreement in the future.
- 15. <u>INFORMATION EXCHANGE</u>. The Parties agree to exchange information necessary to confirm and effect compliance with this Agreement, including but not limited to, TWS customer service fee collection documents including but not limited to those relating to bond reimbursements to KCC.
- 16. <u>NOTICE</u>. Notice shall be served on the Parties at their addresses as they appear in this Agreement, or at the primary business location of a Party if different.
- 17. <u>ENTIRE AGREEMENT</u>. This Agreement is the entire agreement between the Parties respecting the Facility, and no alteration, modification, or interpretation hereof shall be binding on the Parties unless made in writing and executed by both Parties.
- 18. <u>APPLICABLE LAW</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee.
- 19. <u>CONFIDENTIALITY</u>. The Parties agree to not disclose to persons or entities, except on a need-to-know basis, any information contained in this Agreement.

- 20. <u>SEVERABILITY</u>. If any passage, provision, or language contained in this Agreement is inconsistent with or offensive to governing law, the offending element shall be deemed inoperative, with the spirit and effect of the Agreement remaining intact to the extent possible.
- 21. <u>INTERPRETATION</u>. This Agreement has been submitted to the scrutiny of both parties and shall be given a fair and reasonable interpretation without consideration being given to its having been drafted by either party or such party's counsel.
- 22. <u>ACKNOWLEDGMENT</u>. The parties agree that the \$550,000.00, initial payment herein made by KCC to TWS are made pursuant to reimbursable prepayment of capacity fees for lots within the Kings Chapel Development. Such fees shall not attach to the lots but shall be reimbursed to KCC from buyers of such lots.

IN WITNESS WHEREOF, the Part day of	ies hereto have executed this Agreement this, 2004.
Tennessee Wastewater Systems, Inc. (A Tennessee Corporation)	
• /	
By:Robert Pickney, <i>President</i>	
Kings Chapel Capacity, LLC	
(A Tennessee Limited Liability Company)	
By: John E. Powell, Member	

ATTACHMENT A

(A copy of the warranty deed will be attached and marked as "Attachment A.")

Coot dihathen costs -Project Mariaget -William Dr. G - Planning Commerce Rest Water IlVaskin Auskin Public Utilies Convening Sister # 1,273,500 Net bonding costs duting Subdivision build out are the Vesponsibility of the development

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Pay fus to public Utility

In spection fur - for all construction

Above Construction \$720,000 - Fex - 108,000

Construction of Collection Lines, Para Station

tanks of home, , etc (5,000/Aone) \$1,075,000 Fre 161,25

Start cap cost File to 2007 200

£ 43,500

Original Contract

Presented with OCDC Professional Service Agreement June 10, 2003

Total Consideration:

DDR \$30,000

Per lot fees $215 \times \$6,000 = \frac{1,290,000}{1}$

Total. 1,320,000

Utility Company is responsible for all bonding costs.

Payment Terms

DDR - 15,000 - due at signing

15,000 – due when report is approved by Williamson County Planning Commission No Phasing:

Half of tap fees are due at contract signing: \$660,000

Half of tap fees are due when the state of Tennessee approves the construction of the treatment and disposal system. \$660,000

If Developer phases payments

Minimum - 50% total due at signing = \$645,000

After the 107½th Lot is platted \$6,000 pet lot will be due at plat signing for all remaining lots plus ½% per month additional charge for each month that has passed between contract signing and the lots being platted

If original contract is used and signed immediately.

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing and the overall amount due will be reduced by the \$30,000 (DDR fee waived)

Amount due at signing: $(\frac{1}{2})$ x (\$1,290,000) = \$660,000

Less payments previously made

15,000 – for DDR

250,000 – for construction progress payment

265,000 - total payments credited

Balance due \$395,000

Additional payments of \$660,000 plus any applicable interest will be made per the contract, as future phases are platted.

October 31st Optional Contract

Contract offered October 31, 2003

Developer will be responsible for all bonding costs.

No payment is due at contract signing

Developer will play \$600,000 during construction of sand filter and drip irrigation systems with progress payments being made as construction is completed.

The amount due at completion of construction is \$600,000.

Developer will make additional payments of \$1,850 per lot before each phase is platted.

Future payments

 $215 \times 1,850 = 397,750$

Total Payment = \$997,750

If October 31st contract is signed immediately:

OCAC

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing. (DDR fee waived)

Construction of sand filter and drip irrigation system is complete – construction of the storage pond remains to be done. The amount to be paid for completed construction is \$550,000.

Amount to be paid for remaining work \$50,000 49,900

The amount currently due on completed construction: \$550,000 - (250,000 + 15,000)550,000 - 265,000 = \$285,000

Developer will pay \$1,850 per lot before each phase is recorded.

Future Payments:

44,900 \$50,000 when the storage pond construction is complete

\$215 x \$\frac{\$1,850}{3.50}\$ per lot = \$\frac{\$397,750}{3.50} \frac{\psi}{3.20}, 3.50

Total payment = \$997,750 4 920,250

ONSITE CAPACITY DEVELOPMENT COMAPNY

Pay Request - December 10, 2003

Percent Complete as of 12/10/03

Item Description Site Prep Sand Filter-Control System Drip Disposal System Final Grading/Clean-up	Unit	% Compl.	Total	Comp to Date
	LS	90	\$ 30,000	\$ 27,000
	LS	65	745,000	484,250
	LS	90	110,250	99,225
	LS	0	35,000	0
Total			\$920,250	\$ 610,475

Total Complete to Date: \$610,475

As per Contract - \$250,000 Currently Due Remainder due when lots are closed

Robert J. Pickney P.E.

Exhibit Three
Z PAGES

ESTIMATE OF COSTS FOR THE SEWER SYSTEM FOR KINGS CHAPEL SUBDIVISION WITH A **CAPACITY OF 64,500 GAL/DAY** (215 Lots)

milicana e milicana

ENGINEERING:

\$ 30,000 **DDR DESIGN** - Sand Gravel Treatment System, **Drip Field and Holding Pond** \$ 16,500 **DESIGN REVIEW FEE - Pay to Utility (15%) CONSTRUCTION:** \$638,000 SAND FILTER AND DRIP FIELD SYSTEM (John Powell's estimate) **CONSTRUCTION INSPECTION FEE -**\$ 95,700 Sand Filter and Drip Field System -Pay to Utility (15%) **CONSTRUCTION OF PUMP STATION AND** \$ 30,000 FORCE MAIN LINES CONSTRUCTION OF HOLDING POND \$ 50,000 1st Phose 16,000 16,500 95,700 12,000 (21, 575

40,000

285,775

ACC NO NA NOTROS HITTINGHO & HTTTAGHO

INSPECTION FEES FOR PUMP STATION, FORCE MAIN AND HOLDING POND Pay to Utility - (15%)

\$ 12,000

INSPECTION FEE FOR CONSTRUCTION OF COLLECTION LINES AND SYSTEMS ON THE LOTS, ASSUMING GRAVITY TANKS AT HOMES WITH MODERATE SERVICE LINES LENGTHS

COLLECTION SYSTEM COSTS

\$273,000

ON LOT CONSTRUCTION COSTS

\$537,500

[\$2,500/home x 215 homes = \$537,500]

TOTAL CONSTRUCTION COSTS

\$810,500

INSPECTION FEE – Pay to Utility – (15%)

\$121,575

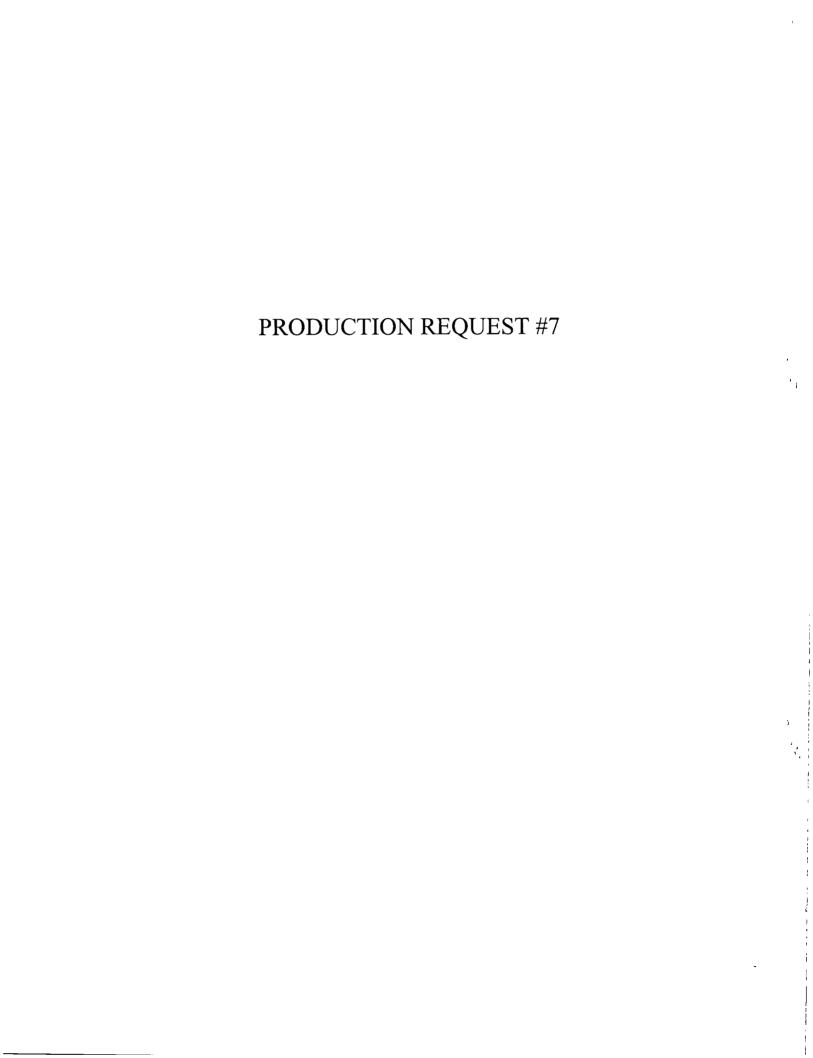
PROJECT MANAGEMENT

Coordinate design and construction activities insuring compliance with Williamson County Planning Commission Regulations, Williamson County Water and Wastewater Authority Regulations, State of Tennessee Department of Environment guidelines and Tennessee Wastewater Systems specifications.

\$ 40,000

TOTAL COST:

\$1,113,775



SERVICES AGREEMENT

This Agreement ("Agreement") is entered into this 2 day of September, 2004, by and between Trailer Lease, Inc., a Tennessee corporation ("Company"), and William H. Novak, a sole proprietor ("Consultant").

WHEREAS, Company is engaged in the business of providing real estate development services and associated wastewater services in connection with said real estate development services (the "Business"); and

WHEREAS, Company desires to retain the services of Consultant to assist it with regulatory and financial analysis of the Business, and other services, which Company may from time to time request of Consultant; and

WHEREAS, Consultant is engaged on a free-lance basis from time to time by various businesses to assist them with research, retrieval, analysis and other services related to utility regulation; and

WHEREAS, it is the intention of the parties hereto that Consultant be retained to perform services on an as requested basis by Company.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties do hereby agree as follows:

Section 1. Services to Be Provided by Consultant. Company hereby retains Consultant and Consultant hereby agrees to provide consulting services to Company, on an as requested basis, in connection with the regulatory and financial analysis of the Business, and to provide other services which Company may request (collectively, the "Services") during the Term of this Agreement. Consultant is not providing any legal advice. Company must rely on the review of its own legal professionals for such advice.

Section 2. Compensation and Expenses.

- (a) <u>Consulting Fee</u>. In consideration of Consultant's performance of the Services, Company shall pay to Consultant a consulting fee at a rate of \$200.00 per hour of which Services are actually performed until the termination of the Agreement pursuant to Section 3. Consultant's hourly fees will be rounded to ten minute increments.
- (b) Expenses. Company shall reimburse Consultant for all usual and customary business expenses incurred by Consultant while performing Services for Company in accordance with Company's customary policies and procedures, including but not limited to, reproduction expenses, overnight delivery expenses, travel and lodging.
 - (c) Payment Terms. Consultant will invoice Company on a monthly basis on

or before the 15th day of the subsequent month for Consultant's hourly fees along with any expense invoices that Consultant has received on Company's behalf. Company will pay Consultant's invoices within 30 days of receipt of a proper invoice.

Section 3. Term and Termination.

- (a) Unless earlier terminated pursuant to Section 3(b), the term of this Agreement shall commence on September 8, 2004 and shall terminate on December 31, 2004 (the "Initial Term"). This Agreement shall then automatically renew for additional three-month periods (each a "Renewal Term") unless terminated pursuant to Section 3(b). The Initial Term and all Renewal Terms shall be referred to as the "Term."
- (b) This Agreement and the rights and obligations of the parties, other than those rights and obligations set forth in Section 6, which shall survive such termination in accordance with their terms, will immediately terminate upon the first to occur of the following events:
 - (i) Fifteen (15) days written notice by either party to the other party of its decision to terminate this Agreement, which it may do with or without cause at any time in its sole discretion;
 - (ii) the mutual written agreement of Company and Consultant; or
 - (iii) any breach by either party of any of the terms, conditions, or covenants embodied in this Agreement, and the failure to cure the same within ten (10) days following written notice of such breach by the nonbreaching party.
- (c) Except for payments for fees earned and expenses incurred prior to the date of the termination of this Agreement, all payments to Consultant under Section 2 shall cease immediately upon the date of such termination. Consultant shall not be entitled to any additional pay, renumeration or reimbursement for his performance of the Services in exchange for his covenants in Section 6. Any termination of this Agreement shall not alter Consultant's obligations under Section 6, nor the time periods during which Consultant is subject to those obligations.

Section 4. <u>Duties and Responsibilities</u>. During the Term, Consultant agrees to perform the Services at the direction of Company and to serve Company faithfully, diligently and to the best ability in his performance of the Services. In connection with his performance of the Services, Consultant will be subject to such policies, procedures, directions and restrictions as Company may reasonably establish, and provide to Consultant in writing, from time to time:

Section 5 <u>Relationship of the Parties</u>. Consultant is entering into this Agreement as, and will continue to be an independent contractor and is not and shall not make any claim that he is an employee, agent, servant or representative of Company. Consultant shall have no authority to transact business, enter into agreements or otherwise make commitments on behalf of Company

unless expressly authorized to do so in writing by an authorized officer of Company. Consultant shall not be entitled to any benefits accorded to Company's employees, including, without limitation, worker's compensation, disability insurance, medical or dental benefits, vacation or sick pay. Company is only interested in the results of Consultant's performance of the Services. Consultant shall have sole control of the manner and means of his performance responsibilities under this Agreement.

Section 6 Confidentiality. During the Term of this Agreement and for a period of two (2) years thereafter, Consultant agrees to treat as confidential any information, whether oral, written, electronic or otherwise, provided by Company to Consultant that Company identifies as confidential or that Consultant, considering the circumstances of disclosure and the subject matter of the information disclosed, should reasonably consider to be confidential. All written documents containing any confidential information shall be returned to Company by Consultant and all electronic confidential information shall be destroyed by Consultant when the Agreement terminates or at any time upon Company's request. This confidentiality provision shall not apply when Consultant has received such information from a third party on a non-confidential basis and not derived from Company. Consultant may disclose confidential information only if Consultant receives written permission from Company to disclose such information.

Section 7 <u>Taxes</u>. Consultant shall be responsible for all state, federal, and local withholdings and/or taxes, including estimated taxes and social security, and appropriate reporting for Consultant or any employees or agents of Consultant.

Section 8 Records: Consultant agrees to keep full and accurate records of all consulting work performed under this Agreement.

Section 9 Indemnification. Consultant agrees to indemnify, defend and save harmless Company, its employees, officers, directors, members and managers from and against any and all suits, claims, demands, losses, damages, fines, or judgments, and any expenses in connection with such, including without limitation, attorney's fees (collectively, the "Losses"), based upon or arising out of loss, damage or injury to the person or property of any other person or business entity resulting from any act or omission of Consultant, or its agents, in connection with the performance of the Services by Consultant. Company agrees to indemnify, defend and save harmless Consultant from and against any and all Losses, based upon or arising out of loss, damage or injury to the person or property of any other person or business entity resulting from the sole act or omission of Company, or its agents, in connection with the performance of the Services by Consultant, so long as such loss, damage or injury is in no way related to, a result of or arising from an act or omission of Consultant.

Section 10. <u>Notices</u>. All notices and other communications required or permitted under this Agreement shall be validly given, made, or served if in writing and delivered personally or sent by registered mail, to Consultant or Company at the following addresses:

addressed to Consultant at: William H. Novak 19 Morning Arbor Place The Woodlands, TX 77381 addressed to Company at:

Trailer Lease, Inc.

P.O. Box 1463

1413 Plymout OR.

Brentwood, Tennessee 37024 37027

Attn: John Powell

Any notice which is delivered personally shall be deemed effective upon receipt by such party and any notice appropriately addressed and mailed shall be deemed effective on the third business day after the date it was placed in the mail, or if earlier, the time of actual receipt.

Section 11. Waiver. There shall be no waiver of any term, provision or condition of this Agreement unless the waiver is evidenced in writing. No such waiver shall be deemed to be a continuing waiver of such term, provision or condition of this Agreement unless the writing which evidences such waiver so states.

Section 12. <u>Titles and Captions</u>. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context of affect the interpretation of this Agreement.

Section 13 <u>Presumption</u>. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Section 14 <u>Counterparts</u>. This Agreement may be executed in two counterparts, each of which shall be deemed an original and both of which shall constitute one and the same instrument, binding on all parties hereto even though all the parties are not signatories to the same counterpart.

Section 15 <u>Parties in Interest</u>. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

Section 16. <u>Savings Clause</u>. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 17. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements whether written or oral among them respecting the subject matter of this Agreement.

Section 18 Agreement Binding. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement may not

be assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld, except that Company, upon notice to Consultant, may assign this Agreement to any of its affiliates without the written consent of Consultant.

Section 19. Amendment. This Agreement may be amended only by the written agreement of the parties hereto.

Section 20. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

Section 21. Survival. Consultant expressly agrees that any termination or rescission of this Agreement, regardless of the circumstances of or reason for such termination or rescission, shall not terminate, modify or any way diminish the enforceability of the covenants and agreements contained in this Agreement, including, without limitation, Sections 6, all of which covenants and agreements shall survive such termination or rescission.

Section 22. Conflict of Interest. Consultant warrants that no other contract or duty on its part now in existence conflicts with this Agreement and if Consultant becomes aware of any such conflict of interest, Consultant shall immediately notify Company.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Trailer Lease, Inc. Ash by Communo her LLC (A)
By:

John Powell, President MCNIBER

CONSULTANT:

William H. Novak



John Powell 1413 Plymouth Drive Brentwood, TN 37027

November 9th 2004

Jeff Hill, Esq. Senior Counsel Office of the State of Tennessee Attorney General P.O. Box 20207 Nashville, TN 37202 - 0207

Dear Mr. Hill,

Please find attached for your review a report surrounding our experience with obtaining sewer services for our development. I would like to discuss this matter further at your convenience and would therefore like to arrange a meeting.

You will also discover some of this experience is astounding. When we initially met with the Pickney's legal counsel, we tried to discuss the laws and regulations surrounding this business, and they said we don't want to discuss that. At our second meeting, again, when I asked their counsel if he had informed his clients about the laws and regulations, some of which they had violated, he told me, this meeting is not about the law, it is about money.

We can show you our extensive attempts to pay lawful amounts and enter into legal contracts. It's amazing to me that the Pickneys, operating a State empowered entity, have violated so many State Laws and have in so doing impeded by many months our multiple million dollar project, including currently further delaying our project at the TRA.. By their improper methods, they are definitely affecting commerce in this State.

Respectfully Submitted,

John Powell

Report Sections	Pages
Cover Letter	1
Introduction	2
General Information	3
Deceptive Acts	4
TDEC Violations	11
TRA Violations	15
Other Violations of OCDC	15
Short Explanation of Schemes	16
What We Ask of The State Attorney General's Office	17

Introduction

As we understand it, in order to plan, construct and then operate a sewer system, an entity, must obtain a State Operating Permit (SOP) from the Tennessee Department of Environment and Conservation (TDEC). In order to offer public sewer service in a particular geographic area and charge homeowners' monthly sewer charges an entity needs to have a Certificate of Convenience and Necessity (CCN), issued by the Tennessee Regulatory Authority (TRA).

From our perspective, Tennessee Wastewater Systems (TWS) and On Site Capacity Development Corporation [or Company] (OCDC) and their family of related companies have created a business plan which as a matter of practice manipulates and violates for financial gain State laws, rules, terms and conditions of the SOP's and the CCN granted to them from the various State Departments and Authorities.

As we have discussed, TWS, using these same business practices, have manipulated many other developers across the State, including in Williamson County, in the same manor and for different financial amounts. Many of the developers are not aware of inappropriate practices of TWS, and if they are, they only understand bits and pieces as they relate to their own experiences. Many developers have been and are concerned through out their experience that if their agreements to build and operate

sewer plants or the utility that services them and their homeowners were withheld by TWS or were found contested by law, it would financially ruin them.

If the State Attorney Generals Office and the Tennessee Regulatory Authority finds a way to eliminate this financial threat to the developers and the people who have done business with TWS, they will find these other developers more willing to discuss their experience. It appears to us that several of the violations of State laws and regulations mandate that the permits of TWS should be terminated by TDEC and that their CCN should be revoked by the TRA.

As one looks at the corporate financials of TWS, TWS appears to be a shell. They have approximately 48 sewer systems, but only one employee, their corporate president, Charles Pickney Jr. We understand that they contract the operation of their sewer business out to others. The examination of those contracts to operate would better reveal the assets of TWS. We have relied on what information was available to us, much of which came from TWS itself. We can share the numerous documents we have your office, if that would be helpful

From my perspective, TWS & OCDC and their family of related companies violate State Laws and ignore State Rules for a reason. It is not a mistake, they are not misinformed, they do it for financial gain. The financial gains we have identified can be separated into four different areas as follows:

- 1. The County Planning Scheme.
- 2. The Bonding Letter of Credit Scheme
- 3. The Inspection Scheme
- 4. State Tax Fraud

As you read this report, references are made to these four topics. At the end of this report, in conclusion, a short explanation of the four topics can be found.

General Information

A wastewater system is not only the treatment plant; it is the entire collection system from the sources (residential homes & businesses) through the treatment plant and then includes the disbursement of the effluent treated water. There are several different ways to collect, treat and disburse. In Williamson County, it is necessary for the utility to own the land, which encompasses the entire wastewater system. We find the definition of "construction" as defined below is important to understand as TWS violates many State codes in relation to the construction of Public Sewer Systems. We find, it is also important to understand the State definition of "Public Sewer System".

Title 68 Chapter 221 Water & Sewerage 68-221-201. Definitions.

As used in this part, unless the context otherwise requires:

(2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works;

68-221-101. Definitions.

(9) "Public sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage is collected, pumped, treated or disposed of finally. "Public sewage system" does not include systems for private residences or dwellings;

We understand that a wastewater utility regulated by the TRA has two accounting methods on how they are to record or obtain ownership of the land and the wastewater systems.

The first method allows the utility to make an investment, purchase the land and build the wastewater system to serve the public. The TRA allows the utility to make a return on this investment.

The second method allows for someone else (developers, municipalities) to build and pay for the system and then donate the system to the utility who will operate it. As the utility has no investment they are disallowed any return on investment. In other words the utility is disallowed a profit on the wastewater system because they have no investment in it.

DECEPTIVE ACTS

Numbers one through eight below regardless of any other State law they violate could all be considered deceptive acts under the Tennessee Consumer Protection Act of 1977.

47-18-104. Unfair or deceptive acts prohibited.

(a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.

- (b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:
- (27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;
 - 1. TWS told our engineers, our attorneys, and us that they were a monopoly regulated by the State and Federal Government (TDEC & TRA, EPA) and as such they were the utility of record for our geographical area and that only they could provide us with residential sewer service. This was deceptive, they did not have this exclusive right to serve our property. Please See EXHIBIT ONE affidavit of Nicholas M. Romer.
 - Note It is a matter of record in several petitions past and present at the TRA that TWS uses the word monopoly as a deceptive sales strategy across this State yet to our knowledge the TRA has never corrected this deceptive business practice
 - 2. TWS told our engineers, our attorneys, and us that they the "Utility" would not provide utility service unless we used a specific contractor, On Site Capacity Development Co (OCDC) to plan, engineer and construct the Wastewater treatment system. This is extortive in nature and certainly unjust; however, it becomes very clear that this is a key element in their business plan.
 - 3. TWS was asked how much this wastewater system would cost. They evaded the question by saying how highly regulated they were. Moreover, they gave approximations of costs in relation to how many homes that would eventually be served. TWS stated that the exact costs would be outlined in the DDR & DSIR report that they would have to provide to the county in order for us to obtain site plan approval from the County Planning Commission. I hey told us the per home charge (cost) would be approximately \$6,000.00 dollars. We knew for the exact same product they charge \$3,400 per home in Lebanon TN. Wilson County. Charles Pickney Jr. President of TWS told us our rate was higher because our property values were more and that the homes to be constructed were worth more. He said the real estate market in Williamson County was different from Wilson County.

Note TWS knew that the detailed costs of the wastewater system in the DDR and DSIR would not come close to the price they had given us. They answered the question in a deceitful manor, not revealing the price they intended to put in the DDR and DSIR so they could entice us to proceed having us believe we would receive a regulated price. This is the start of the County Planning scheme.

TWS violates two separate State statutes (65-4-122 and 65-5-204) in this process. These statutes that regulate utilities are provided in condensed versions below. TWS demands. that their construction company build the wastewater systems. They **indirectly** charge and demand a greater compensation in Williamson County than that they charge or demand in other parts of the State.

65-4-122. Discriminatory charges - Reasonableness of rates - Unreasonable preferences - Penalties.

- (a) If any common carrier or public service' company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned such common carrier or other public service company commits unjust discrimination. which is prohibited and declared unlawful.
- (b) Any such corporation **which charges**, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state **commits extortion**, which is prohibited and declared unlawful.
- (c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

65-5-204. Unjust rate, fare, schedule or classification prohibited.

- (a) No public utility shall:
- (1) Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, or special rate, toll, fare, charge, or schedule for any product, or service supplied or rendered by it within this state;
- (2) Adopt or impose any unjust or unreasonable classification in the making or as the basis of any rate, toll, charge, fare, or schedule for any product or service rendered by it within this state.
- 4. It was an unjust and deceitful business practice for TWS to submit the DDR and DSIR to the County Planning Commission without letting the land

owners review. When we questioned about the cost of the wastewater system in the DDR & DSIR (~\$450,00) not correlating with what we had been previously given as a construction price (\$1.3M), TWS made it very clear to us that we had just received Planning Commission approval and that we did not want to upset that by protesting too much about the construction price. TWS said other developers were fine with the same charges and demands that they were now making of us.

Note Once the county planning commission granted our site plan, TWS used it as a tool to negotiate against us. They know that they have a step up over the developer once the planning commissioners vote. TWS as part of their County Planning Scheme make sure questions about price that could be answered before county submittals are not answered. We trusted them because they were a State empowered entity and at that time they told us we had no other options. In Williamson County once a residential site plan is approved it has to move along through other votes and continue down a due diligence path towards final recordation of plats TWS made us aware of these county deadlines and tried to coerce us into making unlawful payments and then demand us to enter into unlawful contracts. If we did not our site plan would be jeopardized and we would lose hundreds of thousands of dollars in the process. They have been effective in their coercion; our site plan is now in jeopardy and to date it has cost us several hundred of thousands of dollars not to cave into their inflated construction price.

- 5. TWS informed us prior to approval of the site plan that we had excess sewer capacity, that we could sell in the surrounding area and would be worth millions of dollars to us.. They used this as a tactic to get us through Preliminary and then Final Plat without being too concerned about the price they had given us. Two hours before the final plat was to be voted on (June 10th 2004) TWS informed us that we did not have this extra capacity and that we would never the less have to immediately "SIGN A CONTRACT' and "PAY UP" or abandon our residential subdivision that was already under construction. This was a deceptive and coercive business practice.
- 6. TWS offered to reduced the construction cost of the wastewater system by \$385,000 (from \$1.3 M to \$978,000) if, we the developers, would pledge assets and post the required Letters of Credit and related bonds that TWS was supposed to provide to Williamson County. TWS through its construction company thus placed a utility bonding expense as a construction expense. How they would account for this with the TRA is unclear. Since \$385,000 is over 25 years of bonding expenses paid for in advance by the developer, how could they then charge it in their monthly sewer bills to their customers?

Note It is an unjust and deceptive business practice to charge an expense of the TRA regulated utility through a construction company, make the developer pay it, hide it as a construction cost from the TRA and the State Then through the regulated tariff charge that same expense to the citizens of this State through their sewer bills. This appears to us to be an unjust Bonding Scheme, that has the Pickney's paid for bonding, when in fact it is a developer's expense

This Bonding issue is what led us to start discussions with Hal Novak, then Chief of the TRA (Waters & Wastewater Utilities), at which time we discovered that we had been misinformed by TWS on several occasions about bonding. We have much more information on this topic

TWS business practices certainly are disallowed under the following State Statute as they relate to public utilities.

65-4-115. Unjust practices and unsafe services prohibited.

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory,

7. The contract the Pickneys have submitted requires both TWS and OCDC to be licensed contractors, which they are not.. Because of this, the contract is unlawful on its face and therefore is unenforceable. In this contract TWS is responsible to **supervise** as listed below. Furthermore, OCDC is referenced to as "**contractor**" and responsible for all of the necessary work for the design and installation of the treatment and disposal system. Please see State affidavits which prove that TWS and OCDC are not licensed contractors by this State. Please see a checks totaling for \$265,000 dollars paid to OCDC for work as a contractor. A copy of this Contract is attached in Exhibit ONE.

Furthermore the Pickneys submitted an altered contract document to the TRA, TDEC and a court in Williamson County. This version of a contract emerged when TWS learned that we sought another TRA utility to serve our residential neighborhood. A contract similar to this one was signed by John Powell. The top two pages of this contract have been altered from it's original state, but not the signature page.

8. It was an unfair and deceptive act (T.C.A. 47-18-104, Unfair or deceptive acts prohibited) for TWS and OCDC to present themselves as contractors and to act in the capacity of a contractor. Please review Chapter No. 492 Of The Public Acts Of 2004 listed in its entirety below.

Tennessee Acts

CHAPTER NO. 492 OF THE PUBLIC ACTS OF 2004

SENATE BILL NO. 2244

By Fowler, Dixon, McLeary

Substituted for: House Bill No. 2399

By Wood, Todd, DuBois, Sharp, Vincent, Bittle, Shaw, Bunch, Pleasant, Gresham, Bowers, Brenda Turner, Baird, Hensley, Black, Rowland, Phillip Johnson, Lynn

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18 and Title 62, Chapter 6, relative to consumer protection violation for misrepresentation of unlicensed contractors as licensed contractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section $\underline{47-18-104}$ (b), is amended by creating a new subdivision:

- () Representing that a person is a licensed contractor when such person has not been licensed as required by § 62-6-103 or § 62-37-104; or, acting in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ 62-6-102(3)(A), 62-6-102(5) or 62-37-103(5), and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed;
- SECTION 2. Tennessee Code Annotated, Title 62, Chapter 6, Part 1, is amended by creating the following new section:
- <u>62-6-136</u>. (a) It is unlawful for any person, firm or corporation to represent itself as a licensed contractor, or to act in the capacity of a "contractor" as defined in Tennessee Code Annotated, §§ <u>62-6-102(3)(A)</u>, <u>62-6-102(5)</u> or <u>62-37-103(5)</u>, and related rules and regulations of the State of Tennessee (or any similar statutes, rules and regulations of another state) while not licensed, unless such person, firm or corporation has been duly licensed under § <u>62-6-103</u> or § <u>62-37-104</u>.
- (b) In addition to the penalties set out in §§ 62-6-120, 62-37-114 or 62-37-127, a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in Title 47, Chapter 18, Part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.
- (c) An individual who violates this section and would, but for the provisions of this section, have limited liability as owner of an entity having limited liability protection, including but not limited to a corporation, is personally liable for such individual's own representations, acts or omissions to the same extent as if that individual rendered such representations, acts or omissions as an individual.

SECTION 3. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: April 1, 2004

APPROVED this 12th day of April 2004

Additionally not having a State Contractors license has created other problems for TWS and OCDC

Additionally, not having a State Contractor license has other implications.

62-6-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

- (2) "Contracting" means any person or entity who performs or causes to be performed any of the activities defined in subdivision (3)(A) or (6);
- (3)(A) "Contractor" means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$25,000) or more.

§62-6-120. Penalties.

- (a)(1) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-103, or who violates the terms and conditions of any license or renewal granted by the board pursuant to this chapter, commits a **Class A misdemeanor**. The penalties imposed by this subdivision shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of such person.
- (2) Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-

103 is ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred. Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of such project.

The above State statute would disallow either TWS or OCDC from completing the wastewater treatment system because neither were licensed contractors. If the TRA allowed TWS to serve our residential subdivision they would be defeating the State Law governing licensed contractors.

Additionally if the TRA allows TWS to serve our Subdivision they also would defeat the TDEC decision to terminate the SOP permit which is explained in further detail below.

Kyle v. Williams, 98 S.W.3d 661 (Supreme Ct Tenn. 2003) ...In explaining these rules, this Court in Farmer adopted the following rationale from a decision of the Washington Supreme Court:...

The [contractor's licensing] statute was designed for protection of the public. The overriding public policy must not be defeated by an attempt to accommodate one who has violated its specific provisions, albeit unwittingly. The law will be nullified if noncomplying contractors are permitted to evade the statute ..."

TDEC Violations

TWS has violated the terms and conditions of the State Operating Permit (SOP) permit granted to them by TDEC. In the submitted contract, TWS violates the terms of the SOP permit by making the developer install the collection system which is part of the system. It would be unlawful for the developer to construct or install the collection system but as stated above TWS is requesting that they do so in their submitted contract.

69-3-108. Permits.

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
- (2) **The construction, installation,** modification, or operation of any treatment works, or part thereof, or any extension or addition thereto:

Additionally TWS has violated the terms of the SOP by not obtaining a bond in regards to the sewerage system they obtained a permit for nor did they receive approval of the same. (69-3-122)

- 69-3-122. Sewerage system contractors or operators Bonds or security Noncomplying or abandoned facilities.
- (a) No person shall construct, operate or hold out to the public as proposing to construct or operate a sewerage system unless such person first provides a bond or other financial security to the department, and has received approval of the same.
- (b) The board may by regulation establish the amount and form of such bond or financial security for various sizes and types of facilities. In no case shall the amount of the bond or financial security exceed seventy-five thousand dollars (\$75,000). The purpose of the bond or financial security shall be the protection of the public health, welfare, and the environment of the state.

TWS had a duty to comply with the terms and conditions of the permit granted to them by TDEC.

$\frac{\text{RULES OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF }{\text{SOLID WASTE MANAGEMENT}}$

1200-4-5-.07 TERMS AND CONDITIONS OF PERMITS.

- (1) When a permit is granted it shall be subject to the provisions of Section 69-3-101, et seq. Tennessee Code Annotated, these regulations, and any special terms or conditions the commissioner determines are necessary to fulfill the purposes or enforce the provisions of that section.
- (2) The following standard conditions, where appropriate, apply to NPDES permits as well as state permits issued for the treatment, collection or disposal of wastewater:
- (a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Water Quality Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

TWS has knowingly violated the terms and condition of the SOP permit granted to them by not obtaining bonds (69-3-122)

TWS has knowingly violated the terms and conditions of the SOP permit granted to them by ignoring (69-3-108). TWS the permittee has others construct (which is unlawful) the wastewater system so that they may charge over \$400,000 in inspection fees. If they followed the terms and conditions of the SOP only TWS would be allowed to construct and then they would not be able to charge the developers inspection fees. The term

construction as it relates to sewer systems is in itself regulated. (See Page 3 Definitions) This is the basis for their Inspection Scheme. It would be hard to charge someone for inspecting your own work. We feel this may be one of the primary reasons OCDC was created. They violate the terms and conditions of the SOP, knowingly, in order to fraudulently charge utility inspection fees. Not only is this an unjust and deceitful business practice it is additional grounds for TDEC to terminate the SOP permit.

TWS had the duty to comply to all terms and conditions of the SOP (1200 - 4-5-.07)

TWS knowingly violates the terms and conditions of the permit for financial gain. The commissioner of TDEC would be justified in assessing the maximum daily amount against TWS. The commissioner must understand that TWS has used the SOP in an attempt to extort money, and in fact if TWS has charged any inspection fees to developers who are gifting the plants back to TWS they have committed extortion as defined in State Statute (65-4-122).

69-3-115. Violations - Penalties - Judgment by consent.

(a) (1) Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:

(B) Violates the terms or conditions of a permit;

Additionally, an engineer was required as a condition of the SOP. The engineered drawings tendered to TDEC and Williamson County were completed and tendered to TDEC and Williamson County by an unlicensed engineering firm, "Pickney Bros., Inc." This is in violation of State Code (62-2-601 Practice – Disclosure). These engineered drawings of the sewer system were signed by a registered individual engineer, Robert Pickney, separate from Pickney Bros, Inc. Under the rules which govern his profession, his license should be terminated for specific causes that are outlined in the Rules of State Board of Architectural and Engineering Examiners which include but are not limited to

0120-2-.02 PROPER CONDUCT OF PRACTICE.

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (2) If the registrant becomes aware of a decision taken by an employer, client, or contractor, against the registrant's advice, which violates applicable Federal, State or Local building Laws and Regulations or which may affect adversely the safety to the public, the registrant shall:
- (a) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable Federal, State or Local building Laws and Regulations;

In the above, Proper Conduct Of Practice, Robert Pickney would be required to report a company he owns 25% of either TWS or OCDC as being unlicensed contractors. These contractors violated State Laws in the construction of a public Sewer plant and system

0120-2-.05 CONFLICTS OF INTEREST.

- (1) The registrant shall conscientiously strive to avoid conflict of interest with his employer or client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to his employer or client.
- (2) The registrant shall avoid all known conflicts of interest with his employer or client, and shall promptly inform his employer or client of any business association, interests or circumstances which could influence his judgment or the quality of his services.
- (3) The registrant shall not accept compensation (financial or otherwise) from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
- (4) The registrant shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
- (5) The registrant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.

Robert Pickney is in violation of all of the above sections within 0120-2-.05 additional information is available on each of the above parts

0120-2-.07 MISCONDUCT.

- (1) The registrant shall not knowingly associate with, or permit the use of his name or firm name in, a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.
- (2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
- (a) Federal, State and Local building laws and regulations, including building permit requirements; or
 - (b) Registration requirements of T.C.A. Title 62, chapter 2.
- (3) The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements of T.C.A. Title 62, Chapter 2.

Robert Pickney is in violation of all of the above sections within 0120-2-07additional information is available on each of the above parts.

TRA Violations

TWS has violated several T.C.A. State Statutes under title 65, which were created to regulate public utilities, a few of which were previously mentioned in this report.

The TRA guidelines for Utilities doing business with affiliated companies have been completely misapplied by TWS. Those guidelines are available on line at the TRA website.

Last year's financial report of TWS is available through the internet at the TRA website. Last year TWS reported \$206,479 in total gross receipts; Charles Pickney, Jr. chief officer, only employee, of TWS, signed this. On our sewer system alone, they collected a total \$285,775 dollars on our one plant. TWS operates approximately 48 plants. A copy of the front page of this financial is attached as Exhibit TWO

I would suggest that all of their inspection fees are collected under the disguise of construction fees and never reported to the TRA. Further, where is the bonding income reported?

I submit another document (exhibit THREE) entitled "Estimate of Costs for the Sewer System for Kings Chapel Subdivision with a Capacity of 64,500 Gal/day (215) lots. Charles Pickney, Jr. first gave me this document on a hand written on notepaper. I had him sign, and made a copy he then took the Original back and had it typed up and added a few more details. Note on this document how he says Pay to Utility review fees and inspection fees. TWS has never reported as income on their financials, inspection or review fees, which would be subject to a 3% tax. Alternatively, if they are just charging us and they have not charged others they commit extortion under T.C.A. 65-4-122.

Other assumed violations of On Site Capacity Development Co., (OCDC)

- 1. Another developer in Wilson County informed us that OCDC did not have workers comp insurance. When they asked Robert Pickney, he said they didn't need it because they were a regulated Utility and were exempt. When pressed further on this issue he tried to substitute another company as the company who had the insurance.
- 2. We cannot find evidence of a State Business License for OCDC who has collected over \$265,000 on our sewer project alone. This State license in theory could exist in any county within the State. We feel they do not have one, because then they would have to pay additional tax as described above. OCDC headquarters are located in Davidson County.

Short explanation of Schemes

<u>Planning Scheme.</u> TWS purposely ignores directly answering questions related to their products and services. They say, "Wait until the Planning Commission votes, then all these questions can be answered in detail because we will have the DDR & DSIR completed, and if the County should vote against, all these discussions become irrelevant". After they get Planning Commission approval their attitude completely changes they become defiant if you ask a question. They then use the timelines required by the Planning Commissions to coerce a better deal for their Utility.

Bonding Scheme. TWS through their construction company inserts a number (in our case \$385,000) for bonding costs. This is a utility expense not a cost of construction. However, it is quite disturbing when you realize that the Utility is then charging the citizens who pay for their sewer every month this same expense to the Utility. The Pickney's are in fact *double dipping* charging once to the developer and then twice on a permanent basis their customers.

<u>Inspection Scheme</u>. TWS (the Utility) charges review fees for an unlicensed Engineering firm they own and demand that their customers use. They do not disclose this fact. TWS (the Utility) charges inspection fees to inspect the work of their own construction company OCDC. They do not disclose this fact. Inspection and design fees for our project raise the price by \$405,775 on a sewer plant that cost about \$500,000.

State Tax Fraud. We would suggest from the evidence we have collected that TWS is not reporting their total Utility Gross receipts which is taxable under T.C.A. 67-4-406. And should be subject to the penalties under 67-2-121

67-4-406. Miscellaneous public utilities.

- (a) Each public utility, other than those specifically enumerated and taxed under another section of this part, shall for the privilege of doing business pay to the state for state purposes an amount equal to three percent (3%) of the gross receipts in this state.
- 67-2-121. Violations Criminal penalties.
- (a) Any person failing to file a return, as required by § $\underline{67\text{-}2\text{-}107}$, or any person violating any rule or regulation that may be promulgated by the commissioner under the authority vested in the commissioner in this chapter, or any corporation failing to furnish the information required by § $\underline{67\text{-}2\text{-}106}$, commits a Class C misdemeanor.
- (b) The making of a false return with intent to defeat the tax constitutes a Class E felony.

What we ask of the State Attorney General's Office

- 1. For a meeting to discuss at length this report, and have present those attorneys which specialize in matters which relate to The Tennessee Department of Environment and Conservation and The Tennessee Regulatory Agency.
- 2. We would ask for the State Attorney General or the Consumer Advocate Division to verify with the TRA what State Statutes they would be defeating if they granted the Intervention of TWS in the Petition with docket # 04-00335.
- 3. We would ask that The State Attorney's office share appropriate parts of the information provided in this report to the proper State agencies to improve practices in this industry.
- 4. We would ask that the State Attorney Generals Office after investigating the allegations contained in this report to take appropriate actions, including potential prosecution of TWS, OCDC, and others for their deceptive acts which are in violation of the Tennessee Consumer Protection Act of 1977.

John Powell 1413 Plymouth Drive Brentwood, TN 37027

November 10, 2004

Jeff Hill, Esq.
Senior Counsel
Office of the State of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202 - 0207

RE: Updates to Nov 9th report.

Dear Mr. Hill,

As others involved have reviewed the letter I sent to you yesterday, last night I received some comments. I told you I had reduced from 30 pages to 17. However, one comment I felt strong and thought I should convey, it was the addition of another scheme.

Construction Scheme. As TWS the regulated Utility is guaranteed to make a profit, even though a regulated profit, as the TRA dictates. TWS is disallowed from making a profit on the construction of a sewer system. Especially, when this sewer system is bought and paid for by a developer or a municipality and then donated along with the real estate to the utility, allowing them to make legal profits for years and years in the operation of the system. The profits allowed by the TRA apparently are not enough for TWS they abuse the power granted to them by the State by saying to developers we will not operate the sewer plant or provide sewer service unless you let this other construction company (which they own) build the plant.

I understand that a municipality in Western Tennessee wanted to take over a sewer plant that had been built and donated to TWS. They gave the municipality a price in the millions and of course, the municipality did not purchase the sewer system. Although this seems wrong, it appears to be legal for the Pickney's, and another way that they can make money other than what the TRA allows for the normal operation of the sewer system.

Along with this letter I will fax copies of affidavits from the State, which show, that TWS nor OCDC have contractors' licenses. I also received an interesting letter from Hal Novak the former Chief of TRA I have included that for your review.

Respectfully Submitted,

John Powell

WHN CONSULTING

19 Morning Arbor Place The Woodlands, TX 77381

November 10, 2004

John Powell, President Ashby Communities, LLC 1413 Plymouth Drive Brentwood, TN 37027

Dear Mr. Powell:

I've reviewed your letter and its accompanying documentation of November 9th to Mr. Jeff Hill of the Tennessee Attorney General's Office describing the process and setbacks that you've endured in seeking wastewater service for your development. In addition to the points that you've raised in your letter, I would also like to <u>briefly</u> describe the primary utility regulatory issues at hand in this process.

As you mentioned in your letter, Tennessee Wastewater ("TWW") currently holds a Certificate of Convenience & Necessity ("CCN") that was granted by the Tennessee Regulatory Authority ("TRA") in order to provide wastewater service to your development. In addition, TWW has a tariff approved by the TRA that specifies the rates TWW may charge to its customers within this service territory. However, nowhere in this tariff does it specify that TWW may charge \$6,000 or any other rate to inspect or install wastewater plant. This is because the installation of wastewater plant is deemed to be a competitive service that can be provided by many construction firms and not a monopoly service with rates set by the TRA.

Through your letter, it has become clear that TWW has used its monopoly wastewater operator status to mandate that the construction of any new wastewater plant be completed <u>and</u> inspected through one of their affiliate companies at above-market prices. This is clearly an abuse of monopoly power by TWW. Unfortunately, it now appears that this abuse has been carried out for some time by TWW in its other service territories with other developers.

Regrettably, due process has required all of the events that you describe in your letter to happen before you could get to this point; that is asking the TRA for the authority to provide wastewater service to your own development. Certainly, all of this could have been avoided simply by paying TWW the construction fees it requested. However, the abuse of their monopoly power would have continued until someone else was forced to go through this same process that you are bearing right now.

John Powell November 10th Page 2

Hopefully, this brief letter has provided an overview description of the regulatory circumvention carried out by TWW and its affiliates to your and other developers detriment. If I can be of further assistance, please let me know.

Sincerely,

William H. Novak